

These terms and conditions of purchase shall be binding on the parties in all circumstances except where a separately negotiated and signed contract exists.

1. DEFINITIONS

In these conditions, unless the context requires otherwise:

"Conditions" means these terms and conditions of purchase as amended by Torex from time to time;

"Correctly Prepared Invoice" means the invoice issued by the Supplier after Delivery for the Goods or Services first ordered by Torex and which shall include as a minimum the following information:-

- i) the name of the legal entity invoicing and being invoiced;
- ii) the Goods delivered or Services rendered;
- iii) the purchase order number;

"Delivery" means physical delivery to the Delivery Location;

"Delivery Timetable" means the timetable for delivery to the Delivery Location, despatch, performance or completion, whether set out in an Order or otherwise;

"Delivery Location" means the location specified by Torex in the Order;

"Goods" means any physical goods which are the subject matter of an Order;

"Group" means Torex Retail Holdings Limited (company no 06273940) and its subsidiary and holding companies and any subsidiaries of such holding companies whether direct or indirect from time to time, "subsidiary company" and "holding company" shall have the meanings set out in the Companies Act 2006, section 1159;

"IPRs" means intellectual property rights including, but not limited to patents, trade marks, design rights, copyright, database right, trade or business names, applications for any of the foregoing, and other similar rights or obligations, whether registered or not and whether registerable or not, in any country (including the United Kingdom) for the full term of the rights together with any extensions and **"IP"** shall be construed accordingly;

"Order" means the purchase order referencing these Conditions on Torex official purchase order form, together with all documents referred to therein and for the avoidance of doubt an Order may include any Schedule of Works/Services annexed thereto;

"Prices" means the sum of money to be paid by Torex for the Goods supplied or services performed by the Supplier pursuant to an Order and shall be exclusive of any applicable VAT;

"Services" means work and/or services or any of them to be performed by the Supplier for Torex pursuant to an Order;

"Specification" means the written specification agreed between the parties or otherwise published by the Supplier and/or associated technical documents;

"Supplier" means the party set out in the Order;

"Torex" means Torex Retail Holdings Limited, a company organised in the United Kingdom with its registered office located at Houghton Hall Business Park, Houghton Regis, Dunstable, Bedfordshire, LU5 5YG, together with any Group member.

2. COMMENCEMENT AND DURATION

The agreement between Torex and the Supplier is governed by these Conditions which shall commence on the date of acceptance by the Supplier of the Order in accordance with clause 4 below, and shall continue until terminated in accordance with clause 15 below.

3. ENTIRE AGREEMENT

3.1 The Order and these Conditions form the contract between Torex and the Supplier and in the event of any conflict they shall apply in that order of priority.

3.2 These Conditions are the only conditions upon which Torex is prepared to contract with the Supplier and they shall govern the agreement between Torex and the Supplier to the entire exclusion of all other terms or conditions. No terms or conditions endorsed upon, delivered with or contained in the Supplier quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

3.3 Neither Torex nor the Supplier shall be bound by any variation, waiver of or addition to these Conditions except as agreed by both parties in writing and signed on their behalf by their duly authorised representatives.

4. ACCEPTANCE

4.1 Torex shall not be liable for any Order unless it is issued or confirmed on Torex official order form and Torex gives a specific Order number (a PO number) to the Supplier.

4.2 Each Order shall be deemed to be an offer by Torex to buy Goods subject to these Conditions and is capable of acceptance by Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part.

5. QUALITY AND REMEDIES

5.1 Subject to these Conditions, the Supplier represents and warrants that:

5.1.1 it has the legal capacity and right to supply under these Conditions;

5.1.2 it has the right to sell the Goods and/or deliver the Services to Torex;

5.1.3 the Goods and/or Services to be provided shall Comply with the Specification;

5.1.4 the Services shall be executed with reasonable care and skill by properly qualified and experienced persons;

5.1.5 the Goods and/or Services shall be of merchantable quality;

5.1.6 the Goods and/or Services shall not infringe the IPRs of any third party; and

5.1.7 the Goods and/or Services shall comply with any statutory rule or regulation that may be in force relating to the Goods and/or the Services as appropriate.

5.2 These Conditions specifically exclude both parties' rights, whether express or implied, under the Sale of Goods Act 1979 and in respect of Services The Supply of Goods and Services Act 1982.

6. INSPECTION AND TESTING

6.1 If agreed separately between the parties, a Torex inspector, representative or agent, may inspect or test the Goods or Services at any reasonable time at the Suppliers' premises or at the premises of any permitted subcontractor or assignee. For this purpose, the Supplier will give to Torex or any nominee of Torex, or otherwise arrange for, reasonable access to such premises.

6.2 Without limitation to any other rights or remedies available to it, Torex reserves the right, at its option, either to reject any Goods or Services in whole or in part (whether or not the same have been delivered to and accepted by Torex) or to cancel the Order or any part of the Order or to delay acceptance of the whole or any part of it without any further payment or charge for storage or delay if the Goods or Services do not conform with the Specification and/or description of the Goods or Services.

7. INFORMATION REQUIREMENTS

7.1 If so requested by Torex, the Supplier shall provide Torex each month with certain reporting information required in a form agreed between the parties from time to time.

8. DELIVERY

8.1 The Supplier shall use all reasonable endeavours to comply with the Delivery Timetable, however Delivery in accordance with the Delivery Timetable shall not be of the essence. The Supplier shall immediately notify Torex of any known or anticipated inability to meet the Delivery Timetable.

8.2 If the Supplier does not comply with the Delivery Timetable through acts or omissions of the Supplier and if there is no agreement between the parties to the contrary in advance of a delay in Delivery occurring Torex reserves the right to reject Goods or Services not delivered or performed on time and or to cancel the whole, or any part of any Order of which such Goods or Services form part and or to return any Goods already delivered which by virtue of such rejection or cancellation are no longer of use. Such rights of rejection, cancellation or return shall be without prejudice to Torex's right to claim damages and any other remedies against the Supplier for breach of contract.

8.3 All Goods must be adequately protected against damage and deterioration in transit and (unless agreed in writing to the contrary) delivered carriage paid in accordance with Torex instructions (if given) and the packages of Goods must bear the description and the quantity of the contents and Torex Order number.

8.4 The Supplier agrees, on request, to supply Torex with any necessary declarations and documents stating the origin of the Goods.

8.5 Unless agreed in writing between the parties, all delivery costs shall be borne by the Supplier.

9. PASSING OF TITLE TO GOODS

9.1 Title to the Goods shall pass to Torex on delivery to the Delivery Location without prejudice to any right of rejection or other right which may accrue or have accrued to Torex whether under these Conditions or otherwise.

9.2 If the Supplier postpones delivery at Torex request, Supplier shall deliver to Torex at the new agreed date without any additional charges.

9.3 Goods shall be at the risk of the Supplier until actually delivered to the Torex Delivery Location even where the delivery has been delayed or postponed by Torex or at Torex request.

9.4 All Goods rejected or returned for any reason shall be at the risk of the Supplier during transit back to the Supplier.

10. PRICE AND PAYMENT

- 10.1 The Supplier acknowledges and agrees that it may not invoice Torex prior to Delivery.
- 10.2 Subject to the provision of the Goods or Services in a manner satisfactory to Torex, Torex will pay the prices specified in the Order. Any such prices are exclusive of VAT.
- 10.3 Payments will be made by Torex sixty (60) days after the Correctly Prepared Invoice was received by Torex, but time for payment shall not be of the essence.
- 10.4 Torex reserves the right to set off or deduct from any monies due or becoming due to the Supplier any monies due from the Supplier to Torex on any account.
- 10.5 If any sum under the agreement is not paid when due then, without prejudice to the parties' other rights under the agreement, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over the NatWest base rate from time to time.

11. IP BELONGING TO TOREX

- 11.1 The Supplier agrees that it must not use, register, attempt to use or attempt to register the words "Torex" or any trademark of Torex or any other Torex Group company or any similar variation in any website domain name, brand name, trade name or company name.
- 11.2 The Supplier must not knowingly, negligently or recklessly act in any way which brings Torex and the brand name "Torex" or any other brand name, logo or trade mark of any Torex Group company whether registered or unregistered into disrepute.
- 11.3 Torex agrees that it must not use, register, attempt to use or attempt to register any trademark of Supplier or any similar variation in any website domain name, brand name, trade name or company name.
- 11.4 Any new IPRs arising out of the delivery of the Goods or Services shall vest in Torex absolutely and the Supplier shall not be entitled to exploit such IPRs other than in accordance with Torex instructions.
- 11.5 Neither party shall at any time contest ownership of any IPR owned by the other.

12. INDEMNITY

- 12.1 The Supplier shall keep Torex indemnified in full against all direct damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by Torex as a direct breach or negligent performance or failure or delay in performance of the terms of the contract by the Supplier.
- 12.2 By accepting these Conditions, the Supplier represents, warrants and undertakes that the performance of its obligations hereunder will not breach, or cause Torex to be in breach of, any applicable law or regulation and the Supplier shall indemnify Torex for any loss which Torex may suffer as a result of the Supplier being in breach of any such law or applicable regulation.

13. LIMITATION OF LIABILITY

- 13.1 In no event shall either party be liable to the other for any consequential, indirect, special, punitive or incidental damages including, without limitation, lost revenues or profits, whether or not foreseeable and whether arising out of breach of any express or implied warranty, breach of contract, negligence, misrepresentation, strict liability in tort or otherwise, and whether based on this Agreement or any transaction performed or undertaken under or in connection with this Agreement.
- 13.2 Subject to clause 13.3 below Torex shall not be liable to the Supplier under these Conditions for any loss caused by reason of any negligence, or other tortious act, or any misrepresentation (unless fraudulent) or any breach of the Conditions or other act or omission by Torex its employees, subcontractors or otherwise which arises out of or in connection with the Conditions.
- 13.3 Each party's liability to the other for death or personal injury arising from its own or that of its employees, agents or subcontractors shall be unlimited.

14. CONFIDENTIALITY

Neither party shall and shall procure that its personnel shall not, during the continuance of these Conditions or at any time thereafter, publish or disclose to any third party any information, data or process which is confidential or of a commercially sensitive nature connected with the business or affairs of the other, which shall come or have come to its or their knowledge in, or by reason of, the engagement by Torex of the Supplier under this contract, provided that this restriction shall not apply to any information which is at the time of disclosure in the public domain or thereafter becomes part of the public domain otherwise than in consequence of a breach by that party of its obligations under this clause.

15. TERMINATION

- 15.1 Torex shall be entitled to terminate this agreement or any Order at any time on giving the Supplier twenty eight (28) days notice thereof.
- 15.2 The Supplier shall be entitled to terminate this agreement at any time on giving Torex 90 days notice thereof, although the Supplier shall, unless otherwise agreed by Torex in writing, be obliged to perform delivery of any Orders that it accepted prior to termination taking effect.

15.3 In the event a party is in breach of this agreement, the non-breaching party may terminate this agreement immediately, provided that notice describing the breach has been provided to the breaching party and (i) if the breaching party is Torex, Torex has failed to cure such breach within twenty eight (28) calendar days of having been notified by the Supplier thereof; and (ii) if the breaching party is the Supplier, the Supplier has failed to cure such breach within fourteen (14) calendar days of having been notified by Torex thereof.

15.4 Without limitation to any other rights Torex may have, if Torex exercises its rights to terminate pursuant to clause 15.3, the Supplier shall indemnify, defend and hold harmless Torex against any additional direct or indirect costs incurred by Torex in completing the Services or acquiring the same or equivalent Goods which were to be provided under the terminated Order, in addition to the sums that Torex was obliged to pay the Supplier had the Order not been terminated and Torex shall have the right to deduct such additional costs from such amounts, if any, as are due to the Supplier, or otherwise to recover such additional costs.

16. ASSIGNMENT

16.1 The Supplier shall not assign or transfer the Order or any part of it to any other person or subcontract the Order or any part of it without the written permission of Torex.

16.2 Torex accepts the benefit and burden of these Conditions for itself and as trustee for each undertaking which is at any time a company in the same Group and Torex shall be entitled to assign, transfer or sub-contract the benefit of this agreement to any such party.

17. HEALTH AND SAFETY

17.1 The Supplier warrants that the Goods or materials to be supplied in accordance with the Order will be safe and without risk to health when properly used and comply with all relevant legislation.

17.2 The Supplier warrants that it shall comply with all Health and Safety regulations and will at all times comply with Torex Health and Safety Policy from time to time in force, a copy of which is available on request to Torex.

18. LICENCES

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

19. INSURANCE

The Supplier will at all times insure and keep itself insured with a reputable insurance company against all insurable liabilities under the Order and in respect of the Goods or Services. Supplier shall make a copy of their certificate of appropriate insurance available to Torex upon request.

20. NOTICES

20.1 Any notice or other document to be served under this agreement must be in writing and may in the case of Torex be delivered or sent by prepaid first class letter post to the Company Secretary, Torex Retail Holdings Limited, Houghton Hall Business Park, Houghton Regis, Dunstable, Beds, LU5 5YG or to the Supplier at their registered office. Any notice or document shall be deemed served if delivered, at the time of delivery; if posted, 48 hours after posting.

21. INVALIDITY

If any provision of the Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, 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.

22. THIRD PARTY RIGHTS

A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement except as may be expressly provided in this agreement including, without limitation, pursuant to clause 16.2. This clause does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.

23. FORCE MAJEURE

Torex reserves the right to vary the Order or this agreement in any way if it is prevented from or delayed in the carrying on of its business due to circumstances beyond Torex reasonable control.

24. LAW AND APPLICATION

24.1 The Conditions, (and any proceedings by which one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English courts.

24.2 Failure or delay by Torex in enforcing or partially enforcing any provision of the agreement shall not be construed as a waiver of any of its rights under the agreement.

24.3 Any waiver by Torex of any breach of, or any default under, any provision of the agreement by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the agreement.

24.4 Nothing in these Conditions shall prejudice any condition or warranty (expressed or implied) or right or remedy to which Torex is entitled in relation to any Order by virtue of statute or common law.