

# **The Test House (Cambridge) Ltd (TTH)**

## **Terms and Conditions of Purchase**

### **1. General**

- 1.1. Save as expressly provided in the purchase order, these conditions are the only conditions upon which TTH is prepared to deal with the supplier and they shall govern the purchase order to the entire exclusion of all other terms or conditions.
- 1.2. No amendment, modification, instruction, variation, waiver or change shall have effect unless expressed in writing and signed by a duly authorised representative, on behalf of TTH.
- 1.3. The delivery of the purchase order (whether electronically or otherwise) by TTH to the supplier shall constitute the contract between TTH and the supplier for the provision of the goods and/or services stated in the purchase order. The Contract is formed when the supplier:
  - 1.3.1.confirms (verbally or in writing) acceptance of the order; or
  - 1.3.2.provides the goods and/or services to TTH

### **2. Quality – goods**

- 2.1. The goods and services (also “the work”) shall be supplied in accordance with the provisions of the purchase order, they shall be of satisfactory quality, material and workmanship, be without fault, be fit for the intended purpose and confirm in all respects to the purchase order and specifications supplied or advised by TTH.
- 2.2. Without prejudice to any other right or remedy which TTH may have, if any goods or services are not supplied in accordance with any of the terms of the purchase order TTH shall be entitled (whether or not any part of the goods or services have been accepted by TTH) to rescind the purchase order or to reject the goods or services (in whole or part) and return them to the supplier at the risk and cost of the supplier on the basis that a full refund for the goods and services so returned shall be paid forthwith by the supplier.

### **3. Inspection and testing**

- 3.1. TTH, and their representatives shall at all reasonable times be granted access to any premises (including those of suppliers subcontractors), and be allowed to inspect and test the goods and services at any time prior to acceptance or delivery, whichever shall be the later. If delivery is made at TTH premises, then the supplier shall allow such time as is necessary and appropriate for representatives of TTH to duly inspect and test the goods and services, prior to acceptance.
- 3.2. If the results of such inspection or testing cause TTH to be of the opinion that the goods or services or any part thereof does not conform or is unlikely to conform with the purchase order or to any other specifications supplied or advised by TTH to the supplier, TTH shall inform the supplier and the supplier shall immediately take all necessary action at no cost to TTH to ensure conformity with the contract and, in addition, TTH shall have the right to require and witness further testing and inspection and rework.
- 3.3. Notwithstanding any such inspection or testing, the supplier shall remain fully responsible for the goods and services and any such inspection or testing shall not diminish or otherwise affect the supplier’s obligations under the contract.

3.4. TTH may, within twelve (12) months from the completion of the purchase order, give notice in writing to supplier that:-

3.4.1.the work, or any part thereof, has not been performed in accordance with or fails to meet the requirements of the purchase order; and/or

3.4.2.damage has occurred to the property of TTH which is:-

3.4.2.1. the subject of the Work; and

3.4.2.2. is damaged as a result of the acts and/or omissions of the supplier group.

In consideration of the payments specified in the purchase order, the supplier shall forthwith upon receipt of such notice, and at its own cost, re-perform, repair or replace the same. If the supplier re-performs, repairs or replaces any portion of the work, the provisions of this Clause shall apply.

#### **4. Completion and delivery**

4.1. The works shall be completed by the date specified in the purchase order or as varied by any purchase order amendments. Further the supplier shall work to any programme TTH may issue from time to time or to any revision thereof.

4.2. Time of performance, completion and delivery shall be of the essence.

4.3. The supplier shall immediately report any delay or anticipated delay whatsoever and its cause and shall keep TTH fully informed with dates of anticipated actual delivery and shall use its best endeavours (without reduction in any event in its contractual liability and damages or otherwise) to eliminate such cause or causes of delay.

4.4. If the supplier shall fail to commence performance of the work on the starting date or if TTH considers that the supplier may not be able to complete the work by any due date or in fact the supplier shall fail to do so, then, in either event TWI may terminate this purchase order or any part thereof and the provision of Clause 12 shall particularly apply.

4.5. Any part of the work ready for delivery before TTH requires delivery shall be stored by supplier at their own risk and expense, unless otherwise agreed in writing by TTH.

4.6. Delivery of the work shall be affected in the manner and at the time or times specified by TTH and if the work is not delivered accordingly then the supplier shall be fully responsible for any additional expense arising therefrom. In any event, unless otherwise provided the supplier shall be responsible for delivery, carriage paid, to the site designated by TTH.

4.7. All items shall be carefully packed and protected to protect against damage in transit in such a way as to facilitate rational off-loading and all costs of packing, lagging, marking etc., are at the expense of the supplier and no packaging is returnable unless otherwise agreed by TTH in writing, signed by authorised signatory, prior to the date of the purchase order.

4.8. To the extent that they do not conflict with the terms and conditions of the purchase order, Incoterms (2000 Edition) shall apply to this purchase order.

#### **5. Title and risk**

5.1. Title in the work shall pass from supplier to TTH on the creation of the relevant goods or allocation from stock or acquisition by supplier. Notwithstanding the passing of title the risk in such goods shall remain with supplier until delivery or until acceptance of the work by TTH in accordance with the provisions of the purchase order, whichever shall be later. All materials

or equipment forming part of the work in which the title passed shall be clearly marked by supplier as TTH's property and shall be stored separately from suppliers property.

## **6. Price**

- 6.1. The price of the work shall be stated in the purchase order and unless otherwise agreed in writing by TTH shall be exclusive of value added tax but inclusive of all other charges, taxes, levies or duties in relation to the supplier's obligations under the contract, at law or otherwise.
- 6.2. Save as otherwise agreed in writing by TTH, no variation in the price nor will extra charges be accepted by TTH.

## **7. Payment**

- 7.1. In consideration of the satisfactory performance of the work, TTH shall pay the supplier the price in the manner hereinafter provided, but it shall be a pre-condition to any entitlement to payment that the supplier shall send TTH a detailed priced invoice (or invoices as instructed on the purchase order) clearly stating in each case on its face the purchase order number, any appropriate item numbers together with all other information which may reasonably be required by TTH from time to time and such invoice shall be presented as a VAT statement.
- 7.2. Unless otherwise specified in the purchase order any payments for which TTH is liable shall fall due to be paid after deduction of any retention monies within 30 days of receipt of the goods or service or receipt of the suppliers true and correct invoice being duly received at TTH's invoicing address whichever is the later, or such later date as is usual in the normal course of trading with the supplier. For the avoidance of doubt, payment shall not operate as a waiver of any rights of TTH under the purchase order or otherwise.
- 7.3. Unless otherwise stated in the purchase order all payments hereunder shall be made in Sterling.
- 7.4. Unless otherwise stated in the purchase order the rates and prices state in the purchase order are deemed to be sufficient to cover all the suppliers obligations whether express or implied and without prejudice to the generality of the foregoing where the work or any part thereof is to be performed otherwise than at the suppliers premises then it shall be deemed to have satisfied itself as to all local conditions requirements or difficulties or any other factors which may in any way affect the performance of the Work.
- 7.5. TTH shall have the right to set-off against any sum due to the supplier howsoever arising at any time, any claim, damage, loss, expense or other liability or cost which it may have or sustain under this or any other contract between TWI and the supplier or any associated company to the supplier and shall likewise be entitled to deduct any such sum in respect of any claim, damage, loss, expense or other liability or cost sustained by any subsidiary or associated company of TTH against the supplier or any subsidiary or associated company of the supplier.

## **8. Liability**

- 8.1. The supplier shall at all times during and after performance of the purchase order indemnify TTH against:
  - 8.1.1.all loss of or damage to property or acts of default under the purchase order, and all claims and expenses in connection with these caused by the acts or omissions of the supplier, its sub-contractors, employees and agents up to a maximum of five million pounds sterling per act or event giving rise to a claim; and

8.1.2. liability for death and personal injury and all claims and expenses in connection therewith caused by the supplier, its sub-contractors, employees and agents.

## **9. Confidentiality**

9.1. The supplier shall keep the existence and terms of the purchase order and any information, which it learns about TTH or TTH customers in strict confidence and will not disclose the same to any third party without the prior written consent of TTH. This Clause shall remain binding on the supplier notwithstanding completion or termination of the purchase order.

## **10. Publicity**

10.1 The text of any press release or other communication to be published by or in the media or interviews concerning the subject matter of the purchase order shall require the prior written approval of TTH, which will not be unreasonably withheld or delayed.

## **11. Patents and Intellectual Property**

11.1. The supplier shall indemnify and save harmless TTH and its client against, and from all actions, liabilities, claims, demands, proceedings, losses, damages, expenses, costs, fees, charges whatsoever or howsoever arising out of, or in connection with the infringement of any patent or other intellectual property rights in respect of the goods and services supplied hereunder or in relation thereto.

11.2. Any inventions, discoveries, patents, copyrights, trade names, trade secrets, mask works or other intellectual property created in the performance of this purchase order shall be the sole property of TWI and supplier shall do all things requested by TTH to transfer the ownership.

## **12. Termination**

12.1. TTH shall be entitled to cancel the entire purchase order, or any part of the goods or services, by giving written notice to supplier, in which event the sole liability of TTH shall be to pay to supplier the part of the price for any goods and/or services performed in accordance with the purchase order to the effective date of the notice, less the net saving of cost to supplier arising from cancellation.

12.2. TTH shall be entitled to cancel the entire purchase order, or any part of the goods or services, without liability to supplier, by giving written notice to supplier at any time if supplier fails to carry out his obligations in accordance with the purchase order.

12.3. TTH shall not be liable to pay supplier any further monies in respect of the purchase order and supplier shall be liable for and shall pay TTH any costs, expenses or damages incurred by TTH as a result of termination under Clause 12.2 including the additional cost of having the goods and/or services provided by others, if applicable.

12.4. In the event of termination, title to any goods or materials or equipment intended to form part of the goods or either procured for the purchase order or allocated to the purchase order by supplier and any specifications and other documents prepared by supplier in connection with the purchase order, prior to and including the date of termination, shall vest in TTH if not already so vested and TTH shall be entitled to take and/or retain possession of such goods, materials or equipment, specifications and other documents and shall be entitled to enter the supplier's premises or any place where the goods, materials, equipment and specifications are situated and take possession of the whole or any part of the same.

The supplier shall ensure that a provision to this effect shall be contained, mutatis mutandis, in all subcontracts relating to performance of any part of the purchase order.

### **13. Insurance**

- 13.1. The supplier shall, at its own cost, effect and maintain during the term of the purchase order, all such insurances as may be required by law and general public liability insurance including contractual liability and sudden and accidental pollution coverage. Supplier's general public liability policy will show TTH as additional assureds to match the liabilities assumed by the supplier under this contract. The supplier's insurance shall be written or endorsed such that the insurers will have no right of recovery against TTH to the extent of any indemnities granted hereunder by supplier to TTH. The supplier shall provide evidence of such insurance cover when requested by TTH.

### **14. Health, safety environment and quality assurance**

- 14.1. The supplier shall at all times ensure that the goods are supplied or services carried out in a safe and secure manner and in accordance with the requirements of law. The supplier shall demonstrate that it has a safety and quality management system that ensures compliance with all applicable statutory obligations, the requirements of the purchase order and TWI's Environmental, Health and Safety Regulations from time to time in force.
- 14.2. The supplier shall adhere to TTH's H&S and IT policy at all times when on TTH premises. Copies can be provided on request.
- 14.3. The supplier shall notify TTH without delay of any accidents which occur in connection with the carrying out of the work. The supplier shall also notify TTH of any other incidents which occur which might affect the carrying out of the work or the purchase order.

### **15. Hazardous goods**

- 15.1. If any of the goods to be supplied under the purchase order contain any hazardous substances or require any special precautions to be taken to ensure safety in handling, transport, storage or use, the supplier shall in good time prior to their delivery furnish to TTH written details of the nature of those substances and the precautions to be taken and shall ensure that before despatch appropriate instructions and warnings are clearly and prominently marked on the goods or securely attached to them and on any containers into which they are packed.
- 15.2. In particular (but without limitation) the supplier shall provide to TTH in writing all such data, instructions and warnings as are required to comply with applicable legislation relating to health and safety and shall indemnify TTH against any and all liabilities, claims and expenses which may arise as a result of the supplier's failure to do so.
- 15.3. The supplier shall be responsible for supplying such hazardous items or those requiring special precautions in containers or packaging appropriate for the hazard and its handling requirements.

### **16. Liens**

- 16.1. The supplier agrees to waive any right to exercise a lien upon the work or upon any materials, component parts, work in progress, relevant drawings including as built drawings, operating instructions, maintenance manuals, mill certificates, fabrication reports, test certificates and the like and acknowledge that its sole remedy in the event of any breach by

TTH of its obligations under the purchase order is to seek financial relief through the courts. As and when required by TTH, supplier shall give a certificate of waiver of lien, and of any other rights over the work or to any injunctive or performance remedies to TTH or to any third party nominated by TTH.

### **17. Assignment and sub-contracting**

17.1. Supplier shall not assign the purchase order (nor subcontract any major part of the work) without TTH's prior written consent. No assignment or subcontract (even with TTH's consent) shall relieve supplier of any of its obligations under the purchase order. TTH may assign the Order at any time without the consent of the supplier.

### **18. Partnership**

18.1. Nothing in this purchase order shall create, or be deemed to create, a partnership between TTH and the supplier hereto, or as creating any joint obligation between the same except as may be specifically set forth herein.

### **19. Law**

19.1. This purchase order shall be construed as an English contract governed by the laws of England and disputes under it shall be subject to the non-exclusive jurisdiction of the English courts.