

Purchase Ledger Terms and Conditions

E W Beard Ltd

Definitions

1. "Contractor" means E W Beard Ltd of Faraday Road, Dorcan, Swindon, Wiltshire SN3 5JY and includes its successors in title and assigns.
2. "Purchase Order" means this document together with these Purchase Order Conditions and all other documents, provisions, requirements, prices and obligations attached herewith or identified or referred to herein.
3. "Goods" means the materials, goods, plant, equipment and/or related services which are the subject of the Purchase Order.
4. "Supplier" means the supplier of the Goods set out in the relevant Purchase Order.

Application

5. These Terms and Conditions apply to and form part of the contract between the Supplier and the Contractor. They supersede any previously issued terms and conditions of purchase or supply.
6. No terms or conditions endorsed on, delivered with, or contained in the Supplier's quotation, sales conditions, confirmation of order, specification or other document shall form part of the contract except to the extent that the Contractor otherwise agrees in writing.
7. No variation to these Terms and Conditions or to a Purchase Order shall be binding unless expressly agreed in writing.
8. Each Purchase Order by the Contractor to the Supplier shall be an offer to purchase Goods subject to these Terms and Conditions.
9. A Purchase Order may be withdrawn or amended by the Contractor at any time before acceptance by the Supplier. Acceptance of a Purchase Order by the Supplier shall occur when it is expressly accepted by the Supplier or by any other conduct of the Supplier which the Contractor reasonably considers is consistent with acceptance of the Purchase Order.

Quality

10. The Goods shall:
 - a. Conform in all material respects with any sample provided by the Supplier and with any specifications or descriptions relating to the Goods;
 - b. Comply with all applicable laws, standards and best industry practice;
 - c. Be free from defects in design, material and workmanship;
 - d. be of satisfactory quality and compliant with all of the requirements of the Purchase Order; and
 - e. with all applicable British Standards Specifications and British Standards Codes of Practice.
11. The Goods shall comply with all statutory and other requirements and the Supplier shall indemnify and keep indemnified the Contractor from and against any and all losses, damages, liability, costs (including legal fees) and expenses which the Contractor may suffer or incur due to any breach or non-compliance with any such requirements.
12. Where there are no applicable specifications, British Standards Specifications and/or British Standards Codes of Practice the quality of the Goods shall be to the approval of the Contractor.
13. Where and to the extent that the Contractor's quality control and management procedures require stage checks to verify and record compliance with its quality standards the Supplier shall co-operate with the Contractor in implementing those procedures by allowing such access for inspection and testing and/ or providing such documentation as the Contractor may reasonably require.
14. No inspection or testing nor any waiver of inspection or testing by the Contractor shall release the Supplier from any of its obligations under the Purchase Order.
15. Where the Purchase Order requires the Supplier to undertake or permit testing the Supplier shall give the Contractor not less than 10 days' notice in writing that the Goods are ready for testing and shall provide free of charge such assistance and materials including electricity, fuel, apparatus and instruments as may be necessary for the purposes of the tests.
16. The Contractor may reject the Goods in whole or in part if inspection and /or testing indicate that they do not accord with the requirements of the Purchase Order or may at its sole discretion require the Supplier to replace the Goods. The Supplier shall be responsible for the costs of any additional testing required as a result of any rejection.
17. The Goods shall not be deemed to have been accepted until all specified tests have been satisfactorily carried out and all associated documentation has been delivered to the Contractor.
18. If the Supplier shall find any discrepancy in or divergence between any two or more of the requirements of the Purchase Order it shall immediately inform the Contractor in writing specifying the discrepancy or divergence and the Contractor shall issue instructions with regard thereto.
19. The Supplier shall provide free of charge such numbers of copies of test reports, information and other data as are required by the Purchase Order.
20. The Supplier shall make good by repair or replacement or at the Contractor's sole discretion shall provide financial compensation to the Contractor in respect of any defect which becomes apparent in the Goods up to and including the last day of the Defects Liability Period/Maintenance Period stipulated in the Purchase Order (or within 12 months of delivery of the Goods if no other period is stipulated) and if repairing or replacing the Goods shall bear any costs or expenses reasonably incurred by the Contractor as a consequence of such defects, provided always that the defects are not due to improper storage or use by the Contractor or by any person for whom the Supplier is not responsible and that where the materials or goods have been used or fixed the defects are not such that reasonable examination by the Contractor ought to have revealed them before they were used or fixed.

Delivery

21. The Goods shall be delivered by the Supplier, or its nominated carrier, to the location nominated by the Contractor to the Supplier (**Location**) on the date(s) specified in the Purchase Order.
22. Goods will be delivered only on normal working weekdays and between the hours of 8.00 am and 4.30pm. Goods delivered outside of these times shall not be accepted unless alternative arrangements have been agreed by the Contractor in advance.
23. The Goods shall be deemed delivered on completion of unloading only of the Goods, by the Supplier or its nominated carrier (as the case may be), at the Location.
24. The Goods shall be delivered with all relevant manufacturer's literature and with such further written information as may be necessary for their proper handling, use, processing, storage and maintenance.
25. In particular where the Goods are subject to the provisions of the Control of Substances Hazardous to Health Regulations the Supplier shall ensure that the Goods are accompanied on delivery by all necessary assessments, data sheets and associated documents.
26. Where the Goods are delivered utilising a vehicle with a mechanical off-loading facility the Supplier shall ensure that the operator of the vehicle is the holder of an appropriate competency certificate (e.g. Construction Industry Training Board for safe operation) and will produce appropriate evidence when reasonably requested so to do by the Contractor.

Title, risk and copyright

27. Title in the Goods shall pass to the Contractor upon delivery.
28. The risk in the Goods shall remain with the Supplier until delivery.
29. Copyright in all drawings, plans, specifications and any other documents provided by or on behalf of the Contractor or producer and such documents shall not be copied or disclosed to any third party by the Supplier without the Contractor's written consent. In the event that such consent is given the Supplier shall impose a similar condition upon the third party. Such documents shall be returned to the Contractor immediately upon receipt of a written request by the Contractor.
30. The Supplier shall not without the Contractor's written consent make nor permit to be made for the purposes of publication any visual record or copy of any document associated with the Goods.
31. The Supplier shall indemnify the Contractor against any liability, loss, expense, costs (including legal costs), claims or proceedings incurred by the Contractor resulting from any infringement of patent, copyright, registered design or trademark which results from the use of the Goods.
32. The Supplier shall maintain in force insurance policies with reputable insurance companies, against all risks that would normally be insured against by a prudent businessman in connection with the risks associated with this contract.

Variations

33. The Contractor's authorised site personnel may at their sole discretion agree with the Supplier's personnel to amend the delivery time(s) stipulated in the Purchase Order.
34. The Contractor may without additional charge by the Supplier defer the delivery time(s) stipulated in the Purchase Order for such period or periods as may be necessary if the Contractor is unable to accept delivery of the Goods as a result of civil commotion, local combination of workmen, strike or lockout or of any other cause which could not reasonably be foreseen and which is beyond the Contractor's reasonable control.
35. The Contractor may by written instruction vary any of the provisions of the Purchase Order and the Supplier shall forthwith comply with any such instruction. The Supplier shall be entitled to be paid for complying with the instruction and a fair valuation of the variation shall be determined by the Contractor initially by reference to the Suppliers original prices and cost information. Where these are inappropriate a fair and reasonable valuation shall be determined by agreement.
36. No other variation or amendment to any provision of the Purchase Order shall be permitted.

Payment

37. The Suppliers invoices should be sent by e mail to Purchase.Ledger@beardconstruction.co.uk or delivered in duplicate to the Contractor's Swindon office. Each invoice shall identify the Purchase Order number and delivery address to which the invoice relates and shall be supported by a Purchase Order and related delivery note signed by the Contractor.
38. Invoices properly issued, supported and received at the Contractor's Swindon office no later than 7 days after the close of the month in which the Goods were delivered to the Contractor shall be paid by the end of the month in which the invoice is received. Invoices received after that date will be paid by the end of the following month without loss of the Contractor's entitlement to a discount.

Default

39. The Supplier shall indemnify the Contractor against any liability, loss, expense, costs, claims or proceedings (including loss of profits) arising out of any breach, non-observance or non-performance by the Supplier of any of the requirements of the Purchase Order.
40. The Contractor reserves the right at its sole discretion to cancel the Purchase Order in whole or in part if the supplier defaults under any of its provisions including any proper variation or amendment thereof.
41. The Contractor may set-off its costs arising from any such default against any amounts otherwise due and payable to the Supplier by the Contractor under the Purchase Order or under any other agreement.

Assignment

42. The Supplier shall not without the written consent of the Contractor assign the benefit of this Purchase Order.

Severability

43. If any provision of the Purchase Order is held by any competent authority to be invalid or unenforceable in whole or in part it shall be severed from the Purchase Order but the validity of all the other provisions shall remain in full force and effect.

Anti-slavery

44. The Supplier undertakes, warrants and represents that:
 - a. it shall comply with the Modern Slavery Act 2015 (**MSA 2015**);
 - b. it has not committed an offence under the MSA 2015;
 - c. it is not aware of any circumstances within its supply chain that could give rise to an investigation under the MSA 2015;
 - d. it has implemented due diligence procedures to ensure compliance with the MSA 2015; and
 - e. it shall notify the Contractor immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached the provisions of this clause 44.

General

45. The Purchase Order shall be the entire agreement between the Contractor and Supplier and any other documents, provisions, requirements, prices and obligations which are not attached therewith or identified or referred to therein are specifically excluded.
46. Notwithstanding any other provision of the Purchase Order nothing in the Purchase Order confers nor purports to confer on any person who is not a party to it any right to enforce any of its terms.
47. The Purchase Order shall be governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the Courts of England and Wales.

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48. The Supplier and the Contractor will comply with the following terms if (i) the supply of the Goods involves a supply of services provided by an individual engaged by the Supplier (Individual) and (ii) the Supplier is a limited company or a partnership which meets the conditions specified in s610 or s61P of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA):
 - a. The Contractor will undertake an assessment in respect of the Supplier to determine whether if the Goods were provided directly by the Individual to the Contractor, the Individual would be regarded for income tax purposes as an employee of the Contractor or the holder of an office under the Contractor (in each case Deemed Employment).
 - b. Prior to the first payment to or in respect of the Supplier, the Contractor will prepare and provide to the Individual a statement in accordance with the requirements of section 61NA ITEPA, the Status Determination Statement ("SDS").
 - c. The Supplier will promptly provide to the Contractor all such information and documentation as it may reasonably require from time to time in order for the Contractor to determine whether the Engagement is or will be Deemed Employment and, if the Contractor does so determine, in order to comply with any legal obligation on the Contractor to deduct income tax or national insurance contributions from the fees due in accordance with clause 48g below.
 - d. The Supplier will promptly (i) inform the Contractor of any material change to any information or documentation previously provided in compliance with this clause and (ii) provide any other information or documentation that it considers (or ought reasonably to consider) to be materially relevant to determining whether the Engagement is, remains or has become Deemed Employment.
 - e. If at any time the Contractor finds that its initial determination in the SDS was incorrect or determines that there has been a material change in the circumstances of the Engagement such that the determination in the SDS needs to be revised, it will issue a revised SDS to the Individual.
 - f. Subject to Clause 48g below, in respect of payments made to the Supplier in relation to the provision of the Goods, the Supplier will pay and/or deduct and account for any income tax, national insurance contributions (including secondary contributions), apprenticeship levy and any other liability, deduction, contribution, assessment or claim (including any interest, fines, penalties or expenses thereon) ("Tax Liabilities") required by law to be paid or deducted and accounted for by it.
 - g. If the Contractor determines that the Engagement is one of Deemed Employment the Contractor will deduct income tax and national insurance contributions from the fees paid to the Supplier in order to comply with any legal obligation on the Contractor to make such deductions.
 - h. The Supplier will indemnify and keep indemnified and hold harmless the Contractor on demand from and against any and all Tax Liabilities which the Contractor is required to pay or account for to the relevant taxing authority, arising from or made in connection with either the provision of the Goods or any payment or benefit received by the Supplier or the Individual in relation to the provision of the Goods, where such recovery is not prohibited by law. Provided that this indemnity will not extend to any Tax Liabilities to the extent that the Contractor has made deductions under clause 48g in respect of such Tax Liabilities prior to payment to the Supplier.
 - i. The Supplier warrants that it is not, nor will it, prior to the cessation of this Purchase Order, become a managed service company (MSC), within the meaning of section 61B of ITEPA.