



Terms and Conditions of Purchase

1 Definitions

Buyer: means the Company or any of its affiliates issuing the Purchase Order;

Company: means WH Darby Ltd, a company with registration number 05337453 whose registered office is at 16 well Street, Birmingham, B19 3BJ. Vaughtons is a trading division of WH Darby Ltd.

Confidential Information: means all Personal Data and any information (including the Purchase Order), however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of a Party, including all IPRs, together with all information derived

from any of the above, and any other information clearly designated as being confidential (whether or

not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including commercially sensitive information;

Contract: means the contract between the Buyer and the Supplier consisting of the Purchase Order

(including the Specification), these Conditions and any other documents or parts thereof specified in

the Purchase Order. No other documents or terms and conditions shall form part of the Contract unless expressly agreed to in writing by the authorised representatives both parties;

Force Majeure Event: means any events beyond the reasonable control of the affected party including acts of God, fire, flood, war, terrorism, riot, civil commotion and governmental actions;

Intellectual Property Rights (IPRs): means patents, trademarks, Internet domain names, service marks, registered designs, sketches, blueprints, illustrations, drawings, Specifications, diagrams applications for any of the foregoing, copyright, design rights, trade and business names or other documents supplied by or at the request of the Buyer to the Seller in anticipation of or in connection with the Contract shall belong absolutely to the Buyer. The Seller shall at the Buyers request execute any documents which may be required in order to vest such intellectual property rights absolutely in the Buyer.

Purchase Order: means an order placed by the Company to purchase Products and/or Services which incorporates these terms and conditions by reference.

Price: means, in relation to the purchase of any of the Products and/or Services, the amount to be charged by the Supplier to the Company excluding Value Added Tax but including any other taxes,



duties or levies and any transport and insurance charges as stated in the Purchase Order.

Products: means the products described in the Purchase Order and as further detailed in the Specification.

Product Documentation: means the operating manuals and other literature accompanying the Products for use by the Buyer including the Specification.

Services: means the services described in the Purchase Order.

Software Products: means those of the Products, if any, which are computer software.

Specification: means the document or documents (including email communications) detailing the technical requirements of the Goods and/or Services to be purchased in accordance with this Contract inclusive of any drawings.

Supplier: means the person, firm or company to whom the Purchase Order is addressed.

Products & Services

2.1 The Supplier shall sell the Products and supply the Services to the Company in accordance with the Companies Purchase Order. Any of the following are deemed to constitute the Supplier's agreement to comply with the terms of the Purchase Order (incorporating these Conditions):-

2.1.1 any offer and/or acceptance of a Purchase Order by the Supplier;

2.1.2 the commencement of any work by the Supplier;

2.1.3 or the delivery of any Goods or the performance of any Services by or on behalf of the Supplier.

2.2 The Supplier shall deliver the Products and Services to the Buyer in accordance with the date of delivery specified in the Purchase Order, with time for delivery being of the essence.

2.3 The initial term for provision of the Services shall be specified in the Purchase Order, subject to the provisions of clause 10.

2.4 The Supplier will provide all equipment and materials necessary for the provision of the Services unless otherwise stated in the Order.

3 Delivery

3.1 The Products shall be delivered, carriage paid, to the Buyers place of business or to such other

place of delivery as is agreed by the Buyer in writing prior to delivery of the Products. The Services will be provided at the Buyers address specified in the Purchase Order or as otherwise advised.

3.2 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Buyers Purchase Order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.



3.3 Unless otherwise stipulated by the Buyer in the Order, deliveries shall only be accepted by the

Buyer during normal business hours.

3.4 If the Products and/or Services are not delivered on the due date then, without prejudice to any

other rights which it may have, the Buyer reserves the right to:

3.4.1 cancel the Order in whole or in part;

3.4.2 refuse to accept any subsequent delivery of the Products and/or Services which the Supplier

attempts to make;

3.4.3 recover from the Supplier any expenditure reasonably incurred by the Buyer in obtaining the

Products and/or Services in substitution from another supplier; and

3.4.4 claim damages for any additional costs, loss or expenses incurred by the Buyer which are in

any way attributable to the Supplier's failure to deliver the Products and/or Services on the due date.

3.4.5 If the Supplier requires the Buyer to return any packaging material (including reels or drums)

to the Supplier that fact must be clearly stated at quotation stage prior to a Purchase Order being raised and on any delivery note delivered to the Buyer and any such packaging material will only be returned to the Supplier at the cost of the Supplier.

3.4.6 Where the Buyer agrees in writing to accept delivery by installments the Purchase Order will

be construed as a single contract in respect of each installment. Nevertheless failure by the Supplier to deliver any one installment shall entitle the Buyer at its option to treat the whole Purchase Order as repudiated.

3.4.7 If the Products are delivered to the Buyer in excess of the quantities ordered (including agreed tolerance) the Buyer shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.

4 Risk/Property

4.1 The Products shall remain at the risk of the Supplier until delivery to the Buyer is complete (including off-loading and stacking) when ownership of the Products shall pass to the Buyer. Such passing of property and risk shall be without prejudice to any right of rejection or cancellation arising under these conditions.

5 Price

5.1 The Price of the Products and/or Services shall be stated on the Purchase Order and is a fixed

price (excluding VAT). The price for Products and/or Services includes charges for packaging, packing, shipping, any applicable surcharges, carriage, insurance and delivery of the Products, to the Buyer's specified delivery address and any duties, imposts or levies other than VAT. The Price for Services includes all costs and expenses associated with the performance of the



Services, unless otherwise stated in the Purchase Order.

5.2 No variation in the Price nor extra charges will be accepted by the Buyer without the prior written consent of the Buyer.

6 Invoicing and Payment

6.1 Unless otherwise stated in the Purchase Order, payment for the Goods and/or Services will normally be made by the Buyer 60 days following the end of the month in which the Goods (including services, drawings, instruction manuals and other documents specified by the Buyer) or the Services were delivered and invoice(s) were received.

6.2 The Buyer shall be entitled to deduct from the price:-

6.2.1 the unit price for such proportion of the Goods as may be defective and rejected by the Buyer

together with the costs of returning such Products to the Supplier;

6.2.2 any costs or expenses incurred by the Buyer as a consequence of the Supplier failing to deliver the goods to the correct destination;

6.2.3 the fees or other charges or other costs incurred by the Buyer arising out of any Services not

provided or provided inadequately by the Supplier to the Buyer;

6.2.4 any amount which is disputed by the Buyer or any Affiliate of the Supplier on any contract.

6.3 Payment will be made in the currency specified in the Purchase Order.

6.4 The prices charged by the Supplier to the Buyer shall not exceed those prices charged by the Supplier to any other buyer purchasing the same Products or Services in the same or smaller quantities and the Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller.

6.5 Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from Buyer to the Supplier against any amount payable by the Supplier to Buyer.

7 Intellectual Property Rights

7.1 Where Goods are manufactured by the Supplier in accordance with the designs of the Buyer, as detailed in the Specification or otherwise agreed in writing, the materials and processes specified by the Buyer shall be strictly adhered to unless otherwise agreed in writing with the Buyer.

7.2 Any Specification supplied by the Buyer to the Supplier or specifically produced by the Supplier

for the Buyer in connection with the Contract, together with the copyright, design rights or any intellectual property rights (registered or unregistered) in a Specification, shall be the exclusive property of the Buyer and shall be delivered to the Buyer with the Goods or supply of the Services.

7.3 Goods made to the Buyer's Specification shall not be manufactured for or supplied to any other party.

7.4 The Supplier hereby assigns to the Buyer all Intellectual Property Rights owned by the Supplier in any material which is generated by the Supplier and delivered to the Buyer in the performance of the Services and shall waive all rights relating to such material. The Supplier shall not reproduce, publish or supply any such material to any person other than the Buyer



without prior written consent.

7.5 The provisions of this Clause shall survive the termination of the Purchase Order.

8 Confidentiality

Each party shall treat as confidential all Confidential Information obtained from the other pursuant to the Purchase Order and shall not divulge any such Confidential Information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this Clause 8 shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Purchase Order, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause 8) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this Clause 8. The foregoing obligations as to confidentiality shall survive any termination of the Order.

9 Free Issue Material

9.1 Where the Buyer, for the purpose of the Contract, issues materials free of charge or provides equipment to the Supplier, such materials and equipment shall be and remain at all times the property of the Buyer. The Supplier shall maintain all such materials and equipment in good order and condition and insure it for the replacement value against any loss, damage or destruction.

9.2 All equipment or materials paid for or provided by the Buyer must be returned to the Buyer in good condition upon request and shall not be copied or used for any purpose other than completion of the Purchase Order. The Supplier shall correctly maintain and store such equipment and/or materials and shall be liable for any loss or damage to it whilst in the possession or under the control of the Supplier. The Supplier shall keep such materials and equipment at such location agreed with the Buyer.

10 Information

The Supplier shall provide to the Buyer:-

10.1 all information as the Buyer requires to ensure that the Goods and Services comply with and that the Buyer fulfils its obligations under all applicable legislation and industry codes of practice;

10.2 all information relating to any possible risks to health and safety presented by the Goods;

10.3 all information specifically regarding hazardous substances and any dangerous properties the Goods may have; and

10.4 complete, accurate and comprehensive Product Documentation in English for the treatment, assembly, use, efficient operation and/or storage of the Products. Such instructions to include clear and conspicuous warnings relating to any conditions which are necessary to ensure safety in use or onward sale in each case with sufficient detail to enable the Buyer and any end user to understand any possible risks to health and safety.

1 Remedies & Termination

Without prejudice to any other right or remedy which the Buyer may have, if any Products and/or



Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Purchase Order or the Specification the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Products and/or Services have

been accepted by the Buyer:

11.1.1 to rescind the Purchase Order;

11.1.2 to reject the Services (for a full refund by the Supplier) and/or the Products (in whole or in part) and return the Products to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Products so returned shall be paid forthwith by the Supplier;

11.1.3 at the Buyer's option to give the Supplier the opportunity at the Supplier's expense either to

remedy any defect in the Services and/or the Products or to supply replacement Products and carry out any other necessary work to ensure that the terms of the Purchase Order are fulfilled;

11.1.4 to refuse to accept any further deliveries of the Products but without any liability to the Supplier;

11.1.5 to carry out at the Supplier's expense any work necessary to make the Products and/or Services comply with the Purchase Order; and

11.1.6 to claim such damages as may have been sustained in consequence of the Supplier's breach

or breaches of the Purchase Order.

11.2 Notwithstanding anything else contained herein, the Buyer reserves the right to terminate a Purchase Order for Services, for convenience, at any time upon three months' prior written notice to the Supplier.

11.3 Notwithstanding anything else contained herein, the Purchase Order may be terminated by either party forthwith on giving notice in writing to the other if:

11.3.1 the other party commits any material breach of any term of this Agreement and (in the case of

a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach; or

11.3.2 the other party shall have a receiver or administrative receiver appointed of it or over any part

of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order.

12 Effect of termination

12.1 On the termination of the Purchase Order:

12.1.1 all the rights and obligations of the parties under the Purchase Order shall automatically terminate except for such rights of action as shall have accrued prior to such termination and any obligations which expressly or by implication are intended to come into or continue in



force on or after such termination;

12.1.2 each party shall at its own expense forthwith return to the other party or otherwise dispose of as instructed all Confidential Information belonging to the other party and all technical and promotional materials and other documents and papers whatsoever sent to the other party and relating to the Products or the business of the other party (other than correspondence between the parties) and all property being in each case in their possession or under their control;

12.1.3 each party shall forthwith pay to the other party any amount standing to the credit of the other party's account less any moneys then owed to each party.

13 Liability

13.1 The Supplier warrants to the Buyer that:

13.1.1 the Products sold and Services provided to the Buyer hereunder shall conform to the relevant

Specification or any other relevant specifications published by the Supplier, and will be fit for purpose and of satisfactory quality;

13.1.2 the Products and Services shall comply with local laws and regulations relating to their manufacture, sale and maintenance;

13.1.3 Services shall be performed in a professional and workmanlike manner and in accordance with the requirements of the Purchase Order and the Buyer's instructions.

13.1.4 The Buyer's rights under these conditions are in addition to the statutory conditions implied in favor of the Buyer by the Sale of Goods Act 1979.

13.1.5 Upon delivery of the Products to the Buyer, the Buyer shall have the right to inspect and test the Products.

13.1.6 If the results of such inspection or testing cause the Buyer to be of the opinion that the Products do not conform or are unlikely to conform with the Purchase Order or to any Specifications supplied or advised by the Buyer to the Supplier, the Buyer shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity.

13.1.7 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for

the Products and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Purchase Order.

13.1.8 If any of the Products and/or Services fail to comply with the provisions set out in this clause

13 the Buyer shall be entitled to avail itself of any one or more remedies listed in clauses 3 and 11.

13.1.9 Notwithstanding any other rights or remedies the Buyer may have, if the Supplier shall be in

breach of the said warranty in clause 13.1.1 above it shall replace the Products and/or Services concerned (at the Supplier's risk and expense) or, at the Buyer's option, refund the price paid by the Buyer (subject to the Buyer returning the defective Products to the Supplier at the Supplier's risk and expense subject to the Buyer viewing this as being practicably possible).



13.1.10 The Supplier shall have no liability to the Buyer under sub-clauses (1) and (7) above for any damage to or defects in any of the Products caused by fair wear and tear, improper use, maintenance or repair, negligent handling, failure to observe the instructions accompanying the Products or any alterations thereto.

13.1.11 The Supplier shall keep the Buyer indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill or loss of reputation), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

- a) defective workmanship, quality or materials;
- b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Products and Services;
- c) any claim made against the Buyer in respect of any liability, loss, death, damage, injury, cost or expense sustained by the Buyer's employees or customers or agents or by any Buyer or third party arising out of or in connection with, defective Products or Services to the extent that the defect in the Products or Services is attributable to a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Purchase Order by the Supplier, its employees, agent or subcontractors.

13.1.12 If there is any claim of infringement as referred to in Clause 13.1.11 b) the Supplier shall use best endeavors to resolve the claim and, at the option of the Buyer, shall replace the infringing Goods or Services promptly with the Products or Services that do not infringe at no extra cost to the Buyer.

13.1.13 Neither party excludes liability for death or personal injury caused by that party's breach of contract or negligence.

14 Delivery

14.1 The Products shall be delivered to and the Services shall be performed at the address as specified on the Purchase Order or as communicated in writing by the Buyer.

14.2 The Supplier shall give written notice prior to the due date of delivery to the Buyer if the delivery

of the Products or the performance of the Services has been or is likely to be delayed. The written notice shall detail the reason for the delay and the actions the Supplier is undertaking to rectify the problem in order to improve the delivery date.

14.3 The Buyer reserves the right not to accept the delivery of the Product or performance of the Service prior to the due date as set out on the Purchase Order.

14.4 The Buyer reserves the right at no extra cost to postpone the delivery date of all or any of the

Products or postpone the performance of the Services upon giving notice to the Supplier.

14.5 Time for delivery of the Products and performance of the Services as set out in the Purchase

Order (or as amended in accordance with Clause 14.4) shall be of the essence.

14.6 The Buyer shall be entitled to reject all or part of the Products delivered or Services performed that are not in accordance with the Contract no matter how minor the defect.



14.7 The Buyer shall not be deemed to have accepted delivery of any Products and/or Services until the Buyer has had a reasonable time to inspect or test the Products and/or Services.

15 Notice

Any notice given under the Contract shall be sent to the address of the Buyer as shown on the Purchase Order or such other address as the Buyer or the Seller shall notify the other party. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when dispatched.

16 Rights or Third Parties

The parties confirm their intent not to confer any rights on any third parties by virtue of the Purchase

Order and accordingly the Contracts (Rights of Third parties) Act 1999 shall not apply to the Order.

17 Governing Law

This Contract and any dispute or claim arising out of or in connection with the Contract shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

18 Force Majeure

18.1 Neither party shall have any liability or responsibility for any delay in fulfilling any obligation under the Contract so long as the fulfillment of such obligation is prevented or delayed as a consequence of a Force Majeure Event.

18.2 If the Force Majeure Event continues for longer than three months the Buyer may at any time whilst such Force Majeure Event continues by notice in writing to the Supplier terminate this Agreement.

18.3 Illness or shortage of or strikes by the Supplier's staff, agent or subcontractors and failure or delay by any of the Supplier's suppliers to supply goods, materials, services or components shall not be regarded as causes beyond the Supplier's reasonable control.

19 General

19.1 No forbearance, delay or indulgence by either party in enforcing the provisions of the Contract

shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

19.2 No purported alteration or variation of this Contract shall be effective unless it is in writing, refers specifically to this Contract and is signed by a duly authorised representative of each of the Parties to this Contract.

19.3 Failure or delay by the Buyer in enforcing any terms of this Contract is not a waiver of any of its rights under this Contract.