

## Terms and Conditions for the Supply of Goods and Services

### 1 Definitions

1.1 In these Conditions ( unless the context otherwise requires) :

"Conditions" means the terms and conditions contained herein;

"Contract" means the contract between the Company and the Seller for the sale and purchase of the Goods and/or Services as described in the Purchase Order. The Contract shall consist of the Purchase Order, these Terms and Conditions and any other documents ( or parts thereof) specified in the Purchase Order. Should there be any inconsistency between the documents that make up the Contract, they shall have precedence in the order herein listed;

" Correct Invoice" means a detailed invoice quoting the Company' s purchase order number;

" Equipment" means all jigs, tools, moulds, patterns and other equipment supplied to the Seller or ordered by the Company from the Seller for the execution of the Contract;

"Goods" means the goods ( or any instalment or part thereof) to be supplied pursuant to the Contract;

" Material" means all drawings, specifications and information supplied under the Contract;

" Moral Rights" shall have the meaning ascribed by the Copyright, Designs and Patents 1988 Act ( or any statutory amendment or re-enactment thereof) and all rights similar or corresponding thereto subsisting in any other country of the world from time to time;

" Normal Business Hours" means the hours between 9am and 5pm, Monday to Friday excluding public holidays;

"Purchase Order" means the order placed by the Company for the purchase of the Goods and/or Services;

"Seller" means the person, firm or company to whom the Purchase Order is addressed and who is to provide the Goods and/or Services;

" Services" means the services ( or any instalment of part thereof) described in the Purchase Order to be undertaken by the Seller;

"Specifications" means the technical or other requirements ( if any) for the Goods and/or Services contained or referred to in the Purchase Order;

"Company" means Mitchell' s ( Gloucester) Limited

"Company's Premises" means the premises mentioned in the Company's Purchase Order or other contractual document in respect of the Goods and/or Services or if not mentioned means the Company's premises at 88 Bristol Road, Gloucester, GL1 5XA;

1.2 In these Conditions ( unless the context otherwise requires) words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.

1.3 The headings in these conditions are intended for reference only and shall not affect their construction.

### 2 General

2.1 Any tenders or quotations and any supply of goods and services made by Mitchell' s ( Gloucester) Limited ( ' the Company' ) to any person, persons or body corporate ( ' the Customer' ) incorporates these terms and conditions. Acceptance of any tender includes the acceptance of the following Terms and Conditions. Any terms and conditions proposed by the Customer are excluded

2.2 Unless acceptance occurs at an earlier date in time, despatch of the Goods and/or performance of the Services by the Seller to the Company shall be deemed to be conclusive evidence of acceptance of these terms.

2.3 Any concession made or leeway allowed by the Company to the Seller shall not affect the strict rights of the Company under the Contract.

2.4 If in any particular case any of the Clauses in this Contract shall be held to be invalid or shall not apply to the Contract the remaining Clauses shall continue in full force and effect.

2.5 No variation to the Purchase Order or to these Terms and Conditions shall be binding unless expressly agreed in writing by the Company and signed on its behalf.

2.6 In the event of any inconsistency between these Terms and Conditions and any other document or form of communication between the Seller and the Company these Terms and Conditions shall prevail unless expressly varied in writing and signed on the Company's behalf.

2.7 No person who is not a party to this Agreement is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

### 3 Period of Quotation

3.1 Quotations shall remain open for acceptance for a period of 60 days from the date of despatch to the customer unless previously withdrawn. Thereafter, a Quotation is subject to confirmation or adjustment.

3.2 Acceptance of a quotation must be communicated to the Company and on such communication, or of no communication is received, on the commencement of work by the Company on behalf of the Customer, ( " the Contract" ) shall be created between the Company and the Customer.

### 4 Basis of Quotation

4.1 The quote is conditional upon the Employer having supplied the Contractor with adequate drawings ( where the Contractor is not responsible for design) and with adequate information regarding construction details and site conditions ( including the availability of working and storage areas with suitable access roads, the existence of any abnormalities such as heat, fumes, dust etc.) as will enable the Contractor to make a reasonable estimate of the cost of supply and erection of the Installation and the work to which the tender relates ( hereinafter referred to as " the Installation" ) and the time for its completion. In the event of the Employer supplying inadequate or inaccurate drawings, information or details, the quote price will be adjusted accordingly.

The Supplier shall use its best endeavours to interpret the instructions of the Customer but it shall be the responsibility of the Customer to ensure that the goods and services which are ordered from the Supplier will be adequate in design and specification for the purpose which is intended by the Customer.

4.2( a) The quote covers the items in the specification and/or drawings only and, unless otherwise expressly stated, does not include the following items:

building, plumbing and electrical work or the associated work of other trades;  
the supply and erection of scaffolding, ladders, moveable platforms, hoisting and/or lowering gear necessary for the execution of the Installation;

the cost of operating any part of the Installation;

the cost of any fuel, water or electricity used on site.

all quotes are based on work being carried out during normal working hours, Monday to Friday, and access being granted at all reasonable times unless expressly advised to the contrary within the quotation. Extra costs due to overtime working at the Customer' s instruction will be subject to additional cost;

quotes will be subject to revision should the continuity of the progress of the work be interrupted due to any cause outside the Company' s control.

the cost of variations or additional work shall be charged on a time and material basis unless the subject of a separate quotation accepted by the Customer.

4.2( b) Unless otherwise expressly stated, any costs incurred by the Contractor in providing any of the items referred to in paragraph 2 2( a) shall be reimbursed by the Employer to the Contractor.

### 5 Fixed Price Basis

5.1 Where expressly stated to be a fixed price basis, the quote is based upon the types and rates of contributions, taxes, levies and duties ( hereinafter referred to as " the tax items" ) payable by the Contractor in respect of the execution of the Installation and which are current at the date of tender.

5.2 If after the date of tender there is any increase or decrease in the cost to the Contractor of executing the Installation caused by any change in or cessation of any one or more of the tax items or by introduction of any new contribution, tax, levy or duty payable by the Contractor in connection with the execution of the Installation, then the tender price shall be increased or decreased accordingly.

## 6 Materials and Goods

6.1 Unfixed materials and goods properly on site for incorporation into the installation shall remain the property of the Contractor until he has received payment in full.

6.2 Until such payment has been received the Contractor may remove any unfixed materials and goods from site and the Employer shall allow such access to the site as is reasonably necessary for such removal.

6.3 All materials and goods properly on site whether unfixed or incorporated into the Installation shall be at the sole risk of the Employer. If any part of the Installation or any materials and goods are destroyed, damaged or lost through any cause then the Contractor shall be entitled to charge as a variation on the contract for the restoration of any work or replacement of any materials or goods so destroyed, damaged or lost.

PROVIDED that the Employer shall not be liable for any such destruction, damage or loss to the extent that the same is caused or contributed to by the negligence of the Contractor or those for whose action he is responsible.

## 7 Quality and Description

7.1 Without prejudice to any other rights the Company may have, the Seller warrants to the Company that:

( a) the Goods will:

conform as to quantity, quality and description with the particulars stated in the Contract;  
be of sound materials and workmanship;  
be equal in all respects to the Specifications ( if any) and any samples or patterns provided by either party and accepted by the other;  
be capable of any standard of performance specified in the Contract;  
comply with all statutory requirements and regulations relating to the manufacture and sale of the Goods at the time when the same are supplied;  
if the purpose for which the Goods are required is indicated in the Contract either expressly or by implication, be fit for that purpose.

( b) the Services will be performed by appropriately qualified and trained personnel with all due care and diligence and to the highest standard of quality prevailing in the industry at the time of performance.

## 8 Performance of the Services

8.1 The Services will be performed in accordance with the Purchase Order, including but not limited to any acceptance criteria or tests, provision of certificates, programme of installation or performance that may be required.

8.2 Where the Seller is to provide the Services at the Company' s site the Company will ensure that the Seller has such reasonable access to the site as may be necessary for the Seller to perform the Services in accordance with the Contract.

8.3 The Seller whilst performing the Services at the Company' s site must:

8.3.1 take reasonable care to ensure that the performance of the Services does not interfere with the business of the Company, its employees or any other contractor employed on the site;

8.3.2 comply with all statutory obligations, including but not limited to the Health and Safety at Work Act;

8.3.3 comply with any policies and procedures required by the Company and issued to the Seller prior to the performance of the Services;

8.3.4 ensure that the Services are performed during the Company' s Normal Business Hours, unless otherwise agreed in writing by the Company;

8.3.5 leave the site in a clean and tidy condition at the end of each day and on completion of the Services.

## 9 HEALTH AND SAFETY AT WORK, ETC, ACT 1974

9.1 The Customer undertakes that it will comply and will procure that its employees, agents, customers and every other person coming on to or working with on or near the place or places where the Contract is being carried out complies in full with normal and reasonable safety practice including that laid down by statute or common law.

9.2 In the event of the Customer failing to comply with the provisions of Clause 9.1 the Company shall be entitled to suspend the carrying out of the performance of the Contract immediately until such time as the Customer shall comply with the provisions of Clause 7.1. The Company shall not be held in breach of contract nor be liable for any loss or damage suffered by the Customer whatsoever and the Buyer shall continue to meet in full all invoices delivered up to and including the date of stoppage.

9.3 Save in respect of personal injury and death caused by any negligence the Supplier shall not be liable to the Customer in respect of any loss suffered by the Customer due to defect in goods.

9.4 In the event that Suspected Asbestos Containing Materials ( AMC' S) are discovered which are not recorded in the premises Asbestos Register ( if one has been provided) then work in the area will cease immediately and professional guidance sought. Any delays and costs incurred arising from this discovery will be at the client' s expense and will be treated as an over and extra to the contracted works. In the event that the contract has a specified completion date then this will be automatically extended to cover the delays incurred arising from ACM discovery.

## 10 Assignment and Sub-Contracting

Sub-contracting any part of the Contact shall not relieve the Seller of any obligation or duty attributable to him under the Contract or these terms and conditions.

## 11 Price and Payment

11.1 Value Added Tax, where applicable, must be shown separately on all invoices.

11.2 Once the Goods and/or Services have been delivered the Seller shall send a Correct Invoice for the Goods and/or Services which shall identify the Company' s Purchase Order number, and the Company shall pay such invoice if correctly rendered within 30 days of receipt.

## 12 Terms of Payment

12.1 During the execution of the Installation, the Contractor shall be entitled to be paid by instalments.

12.1.1 The Contractor may apply for payment to the Employer at any time or at such specific intervals as are agreed between the parties in writing, stating the total value of the work properly executed ( including the value of any materials or goods intended for incorporation into the Installation provided the same have been delivered to or adjacent to the site or in respect of which the Contractor has paid his supplier or is legally bound to make such payment, and of any amount due under sub-clause 12.3, and of any variations which have been executed) and any Valued Added Tax properly chargeable at the date of application, and of any other amounts due to the Contractor under these conditions.

12.1.2 With in 14 days of receipt of such application the Employer shall pay to the Contractor the full amount properly applied for less a retention of 3% and less any amounts previously paid.

PROVIDED that any Value Added Tax properly due to the Contactor from the Employer shall not be subject to the deduction of retention money.

12.2 The retention money referred to in paragraph 12.1.2 shall be paid to the Contractor within one month of the completion of the Installation.

12.3 If the Employer fails to make any payment in accordance with these conditions, and such failure continues for seven days after the Contractor has given him written notice of the same, then without prejudice to any other rights or remedies of the Contractor, he may suspend the future execution of the Installation until such payment is made and any such period of suspension shall be deemed to be an extension of the period for completion and

shall not be deemed a delay in the completion of the Installation for which the Contractor is responsible.

### 13 Termination and Insolvency

13.1 The Company shall be entitled to terminate the Contract without liability to the Seller forthwith upon written notice to the Seller:

13.1.1 if the Seller becomes bankrupt, insolvent, compounds with its creditors, has distress or execution levied upon its property, is wound up, goes into liquidation ( except for the purposes of a *bona fide* reconstruction) , shall have a receiver, administrative receiver, or administrator appointed of the whole or any part of its assets, or shall suffer the appointment of any similar person under the laws of its domicile; or

13.1.2 if the Seller ceases or threatens to cease to carry on business; or

13.1.3 if the Seller is in material breach of its obligations under the Contract and fails to remedy the breach ( when capable of remedy) within 30 days of a notice from the Company specifying the breach.

13.2 The Company may cancel any Purchase Order or part thereof by giving notice to the Seller at any time prior to delivery. In the event that the Company exercises the rights of cancellation in accordance with this condition its sole liability to the Seller shall be to pay for the cost to the Seller of the work reasonably carried out by the Seller or, in relation to the Goods at the date of cancellation any liability reasonably incurred by the Seller to a third party at the date of termination in relation to the manufacture and supply of the Goods.

13.3 The exercise of any rights granted to the Company under Clause 16 shall not prejudice or affect any right of action or remedy, which may have already accrued or may accrue thereafter to the Company.

### 14 Warranty and Limitation of Liability

14.1 Without prejudice to any other remedies of the Company, the Seller shall as soon as reasonably practicable, upon a request by the Company:

14.1.1 replace or ( at the Company' s option) repair all Goods which are or become defective during the period of 12 months from the date of acceptance where such defect occurs under proper usage and is due to faulty design, or inadequate or faulty materials or workmanship, the Seller's erroneous instructions as to use, erroneous data or any breach by the Seller of any provision of the Contract. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months from the date of acceptance, reinstallation or passing of tests ( if any) whichever is appropriate after repair or replacement;

14.1.2 re-perform any Services found to have been performed defectively within 12 months of the date of their performance.

14.2 In the case of materials and goods supplied and fixed but not manufactured by the Contractor, the extent of the Contractor' s liability in respect thereof shall not exceed the extent of his supplier' s or the manufacturer' s liability to the Contractor

14.3 The Contractor shall not be liable in respect of any defect which may occur in any previously existing system to which the Installation may be connected unless and to the extent that such defect is caused or contributed to by a defect in the Installation for which the Contractor would be liable under this clause.

### 15 Indemnity

15.1 The Seller shall indemnify the Company against all actions, suits, claims, demands, costs, charges, damages, losses and expenses suffered or incurred by the Company to any third party due to, arising from, or in connection with:

15.1.1 the negligent or wilful acts or omissions of the Seller, his servants, agents or contractors in supplying, delivering and installing the Goods and/or the performance of the Services;

15.1.2 the breach of any provision of the Contract by the Seller;

15.1.3 any defect in the workmanship, materials or design of the Goods or their packaging;

15.1.4 any infringement or alleged infringement of any patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right for or relating to the Goods and/or Services unless such infringement has occurred directly as a result of any specification supplied by the Company;

15.1.5 any claim against the Company arising out of an incorrect description of the Goods and/or Services by the Seller.

## 16 Force majeure

16.1 Neither party shall be liable to the other or deemed to be in breach of Contract by reason of any delay in performance or any failure to perform any of its obligations in relation to the Goods and/or the provision of the Services, if the delay or failure was beyond its reasonable control including ( but not limited to) strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power or breakdown of plant or machinery. If the cause of such suspension shall continue for more than 6 months either party shall have the right to terminate the Contract upon giving not less than 7 days' prior written notice to the other and the only liability of the Company shall be to pay the Seller for the Services performed and/or the Goods received by the Company prior to the date of such suspension.

## 17 Law of the Contract

17.1 The Contract shall in all respects be governed by and construed in accordance with English law and shall be deemed to have been made in England and the parties agree to submit to the non-exclusive jurisdiction of the courts of England.

17.2 All disputes arising out of or in connection with this Contract shall be resolved by arbitration. A single arbitrator shall be appointed by agreement between the parties but where the parties fail to reach agreement within 7 days, by the President of the Law Society of England and Wales.