

Conditions of Purchase of Goods and Services for KRG Specialist Engineering Services Ltd



1 GENERAL PROVISIONS

1.1 These extensive conditions of purchase shall apply unless otherwise agreed in writing between the parties.

1.2 Definitions;

ACCEPTANCE: Buyer's written acceptance of Seller's delivery stating the delivery date.

BUYER: The Company stated as such in the Purchase Order Form or its successors or permitted assigns.

CONTRACT: The separate contract document, whether called Purchase Order Form or otherwise (hereinafter referred to as "Purchase Order Form") including any special conditions, these extensive conditions of purchase and any appendices and agreed amendments and variations to said documents.

CONTRACT PRICE: The total price specified in the Purchase Order Form subject to adjustment in accordance with article 12 only and which shall constitute full compensation to SELLER for the WORK, including all costs, expenses, taxes, duties, fees or charges of any kind incurred by or levied on SELLER related to the performance of the CONTRACT and for fulfilling all of its obligations under the CONTRACT.

DELIVERY DATE: The date of SELLER's delivery of the WORK according to the CONTRACT.

DRAWINGS: Drawings, calculations, certificates and all other technical documentation to be supplied by the SELLER under the CONTRACT.

GOODS: All goods to be delivered by SELLER pursuant to the CONTRACT.

SELLER: The company or person stated as such in the Purchase Order Form or its successors or permitted assigns.

SERVICES: All services to be performed by SELLER pursuant to the CONTRACT.

WORK: SERVICES to be performed and/or GOODS to be delivered by SELLER pursuant to the CONTRACT, including the provision of DRAWINGS.

AUTHORITY TO SHIP: Prior approval in writing must be obtained from BUYER before release of GOODS.

1.3 In the event of any conflict between the provisions of the CONTRACT, the various contract documents shall be given priority in the following order:

- a) the Purchase Order Form including any special conditions,
- b) these extensive conditions of purchase,
- c) appendices in the order they are listed, unless stated otherwise.

2 STATUS OF CONTRACT

2.1 The CONTRACT constitutes the entire agreement between the parties and shall have precedence over any inquiry, bid, correspondence and agreements previously made between the parties.

2.2 Other conditions shall not apply to the CONTRACT unless BUYER has accepted these in writing.

3 CONFIRMATION OF CONTRACT

3.1 SELLER shall confirm the CONTRACT by either order acknowledgement or confirmation to the BUYER by E-mail.

4 GENERAL OBLIGATIONS OF SELLER

4.1 SELLER shall prepare and supply the DOCUMENTATION and shall manufacture, supply and deliver the GOODS and perform the SERVICES strictly in accordance with the terms of or necessarily implied by the CONTRACT and, with respect to the GOODS, in accordance with the DOCUMENTATION furnished by SELLER and accepted by BUYER. Acceptance of DOCUMENTATION by BUYER shall not relieve SELLER of his contractual responsibilities.

4.2 SELLER shall ensure that the WORK is performed according to standards of good workmanship, the CONTRACT specifications and in compliance with applicable laws and regulations. Where it is made known to SELLER whether expressly or by implication, that the WORK is required for any particular purpose, SELLER warrants that it will be fit for such purpose.

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- 4.3 All GOODS shall be new and shall be designed and manufactured in accordance with the latest issue (unless otherwise stated in the CONTRACT) of the standards and codes of practice detailed in the specifications or, if none are detailed, in accordance with the latest applicable standards and codes of practice of the industry concerned.
- 4.4 SELLER shall have a certified quality system as defined in the ISO 9000 series of standards suitable for the WORK to be performed. Or in cases where the risk of supplied goods or services is determined by audit as low.
- 4.5 SELLER shall have a documented Health, Safety and Environment (HES) program for the WORK to be performed.
- 4.6 Where no certified or documented systems exist the Procurement and QHSE Managers must jointly agree through the AVL process to approve the supplier
- 4.7 SELLER shall not sub-contract any part of the CONTRACT unless BUYER has given approval in writing. Sub-contracting shall not relieve SELLER of its responsibility for the whole of the WORK and for the timely execution hereof and SELLER shall be responsible for the acts, defaults and neglects of its sub-contractors as fully as if they were the acts, defaults and neglects of SELLER
- 4.8 SELLER shall have in place a documented process for managing the prevention and detection of modern slavery in any part of its business or supply chain. This should be consistent with its disclosure obligations under the Modern Slavery Act.
- 4.9 SELLER shall demonstrate their understanding with regards to their contribution to the quality of the products or services it provides. The safety of their products or services and how they approach the current recognised acceptable standard of ethical behaviour.
- 4.10 SELLER shall have in place a documented process for managing anti bribery and corruption in any part of its business or supply chain. This should be consistent with the legislation such as The US Foreign Corrupt Practices Act (FCPA and the UK Bribery Act 2010 (Bribery Act)
- 4.11 SELLER shall have process in place to prevent the purchase and use of Counterfeit Parts. These process shall include, Maximizing the availability of authentic parts, the procurement of parts from reliable sources, assurance of the authenticity and conformance of purchased products, the control of parts identified and counterfeit and the reporting of counterfeit parts to other potential users and authorities.
- 4.12 SELLER shall have in place the process to control documented information, including the retention periods and disposition requirements (Minimum 5 years).
- 4.13 SELLER shall have implemented the controls and processes for the prevention, detection and removal of foreign objects.

5 RIGHT TO INFORMATION

- 5.1 Upon request, BUYER shall be entitled to obtain all necessary information from SELLER relevant for the CONTRACT, i.e. satisfactory progress reports, information relating to sub-contractors, etc.
- 5.2 SELLER shall permit BUYER or BUYER's clients or sub-contractors to carry out such inspections as BUYER deems to be necessary. BUYER shall have similar rights to SELLER's supplier. Inspections carried out by BUYER or BUYER's agents or approval of documents by BUYER shall not relieve SELLER of his contractual responsibilities.

6 CONTRACT PRICE

- 6.1 The CONTRACT PRICE stated in the Purchase Order Form shall be considered as fixed unless expressly agreed to the contrary.
- 6.2 In the case of deliveries charged for on a reimbursable basis, payment will become due according to article 7 only when BUYER has had a reasonable time to control and accept all documentation on which the account is based.

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7 TERMS OF PAYMENT

- 7.1 BUYER shall make payment within 60 days from the end of the month of receipt of a correct invoice, provided that SELLER's obligations under the CONTRACT have been fulfilled. BUYER may withhold any disputed or insufficiently documented amounts.
- 7.2 If SELLER delivers earlier than agreed, the starting point for calculations of the payment date shall be the agreed DELIVERY DATE.
- 7.3 No payment of or on account of the CONTRACT PRICE shall constitute any admission by BUYER as to the performance by SELLER under the CONTRACT.
- 7.4 Interest on overdue payment shall be payable as stated in the Purchase Order Form/Special Conditions.
- 7.5 If advance payments are agreed upon, SELLER shall provide an on demand guarantee issued by a bank and in a format acceptable to the BUYER in a corresponding amount valid until BUYER's ACCEPTANCE.
- 7.6 BUYER is entitled to deduct from or set-off against any money due or which becomes due from it to SELLER under the CONTRACT or otherwise, any money due to it from SELLER, whether such sum(s) are due by reimbursement, indemnity or otherwise, or to recover such sum(s) as a debt, or to draw such sum(s) from any applicable bank guarantee furnished by SELLER.
- 7.7 SELLER shall submit a final invoice within 60 days after BUYER's ACCEPTANCE. The final invoice shall include all claims to be made by SELLER pursuant to the CONTRACT. Claims not included in the final invoice can not be submitted later by SELLER.

8 TERMS OF DELIVERY/SHIPPING INSTRUCTIONS/PACKING LISTS/INVOICES

- 8.1 The provision of Incoterms latest edition shall apply to the agreed type of delivery.
- 8.2 SELLER shall notify BUYER when the WORK is ready for delivery. SELLER shall not deliver the WORK before receiving a release in writing from BUYER. If SELLER wishes to deliver the WORK (or part thereof) before receiving such release, it shall obtain the written consent of BUYER before so doing. Where AUTHORITY TO SHIP is required the SELLER shall comply with the requirements to ship obtaining the written consent of the BUYER before shipping.
- 8.3 Partial deliveries shall not be accepted and cannot be considered as a partial fulfilment of SELLERS obligations unless accepted in writing in advance by BUYER.
- 8.4 SELLER shall promptly make good at his own cost any loss or damage, howsoever caused, to the GOODS before the risk therein has passed to BUYER. Risk in each item of the GOODS shall pass to BUYER on delivery.
- 8.5 If BUYER is responsible for the transportation, SELLER shall in good time prior to dispatch, request dispatch instructions from BUYER. If SELLER is responsible for the transportation, he shall as soon as possible, and not later than the date of dispatch, send an advice note advising of dispatch so that BUYER may make preparations for receipt of the GOODS.
- 8.6 Packing lists/advice notes/invoices etc. shall only relate to one Purchase Order Form and shall be duly marked with Purchase Order Form number and part number(s) and other information required by the CONTRACT. Packing lists/advice notes and invoices shall be completed so that each item corresponds to the Purchase Order Form with respect to item number, part number, GOODS description and specification.
- 8.7 All GOODS shall be duly marked with BUYER part number and in accordance with packing lists and instructions stated in the Purchase Order Form. If the consignment consists of more than one package, each package shall contain a detailed list of contents.
- 8.8 SELLER shall submit to BUYER one original invoice. Invoices must be marked with BUYER's Purchase Order Form number.
- 8.9 For all deliveries, the GOODS and packing lists/advice notes shall be duly marked with the gross weight.
- 8.10 SELLER shall comply with all applicable legislation regarding the marking of hazardous material.
- 8.11 Invoices which do not comply with the conditions in this article will be returned by BUYER. Any certificates and other documents specified in the Purchase Order Form shall be delivered together with the GOODS. This documentation is considered to be a part of the delivery and invoices shall not be paid until it has been received.

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9 CERTIFICATE OF ORIGIN/CUSTOMS INVOICE

9.1 In the case of GOODS of EEC or EFTA origin, BUYER or any third party specified by BUYER, shall be supplied with a certificate of origin and custom invoices.

9.2 Costs incurred by BUYER due to lack of certificate of origin or customs invoices shall be charged to SELLER and deducted from the CONTRACT PRICE.

10 TITLE/FREE ISSUE OF MATERIALS

10.1 Upon payment of any instalment of the CONTRACT PRICE all completed GOODS, and all materials intended for incorporation into other GOODS, as soon as they arrive in SELLER's premises, or being already in the SELLER's premises, are appropriated to the CONTRACT and shall become BUYER's property but shall remain at the SELLER's risk subject to sub-article 8.4.

10.2 All documentation issued by BUYER in connection with the CONTRACT shall, as between BUYER and SELLER, be the property of BUYER.

10.3 If BUYER issues materials free of charge to SELLER to be incorporated into the GOODS such materials shall, as between BUYER and SELLER, be the property of BUYER. SELLER shall have the care of such materials and maintain them in good order and condition and will use them solely in connection with the CONTRACT. Loss or waste of, or damage to, such materials while they are in the care of SELLER shall promptly be made good by SELLER at his own cost. SELLER shall, wherever practicable, keep such documentation and materials mentioned in sub-articles 10.1— 10.3 apart from other goods and materials in his premises and shall mark and label them as the property of BUYER.

10.4 Upon receipt of free issue materials from BUYER, SELLER shall confirm such receipt within 24 hours by submitting a copy of the packing list to BUYER.

10.5 SELLER shall not permit the creation of and shall promptly discharge any lien, charge or other encumbrance created in or over the GOODS or DOCUMENTS and shall not enter into any agreement with any third party which shall prevent BUYER acquiring clean title thereto. SELLER shall indemnify BUYER against any costs and expenses (including legal fees) incurred by it as a result of any breach of this sub-article by SELLER.

11 CONTRACT SCHEDULE, ACCEPTANCE AND DELAY

11.1 Delivery of the WORK shall take place according to the agreed contract schedule and SELLER shall be deemed to have fulfilled his delivery obligations when BUYER has given his ACCEPTANCE. BUYER has in all cases the right to demand delivery of the WORK upon payment of the outstanding amount due to SELLER under the CONTRACT.

11.2 As soon as SELLER believes, or has grounds for believing, that the delivery will be delayed, he shall immediately notify BUYER in writing of the delay and the cause thereof. SELLER shall furthermore inform BUYER of the measures he will initiate in order to minimize the delay and also propose a revised date of delivery. If BUYER considers that SELLER is entitled to an extension it shall grant such extension in writing as it considers reasonable and confirm the new DELIVERY DATE.

11.3 SELLER shall respond in writing to all delivery reminders put forward by BUYER.

11.4 SELLER shall implement all necessary actions and bear all costs incurred to minimise the delay unless the delay is caused by BUYER.

12 CHANGES TO THE WORK

12.1 BUYER has the right to order such changes to the WORK as in BUYER's opinion are desirable. Changes may include an increase or decrease in the quantity, character, quality, kind of execution of the WORK as well as changes to the contract schedule. Changes to the WORK shall be ordered through change orders.

12.2 When BUYER requests a change, SELLER shall as soon as possible and within 7 days submit a written confirmation containing a description of the effects the change will have on the price, contract schedule, time of delivery and technical specification. SELLER shall not initiate the change work until BUYER has instructed SELLER in writing.

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12.3 If SELLER finds that a change is required, BUYER shall be notified in writing without delay. Changes must be approved by BUYER by means of a written change order before SELLER initiates the change work. SELLER's request for a change order must be put forward without undue delay if the request shall give effect to a change order.

12.4 If a change entails cost saving for SELLER, BUYER shall be credited accordingly.

12.5 Disagreement as to compensation payable in respect for a change order shall not entitle SELLER to withhold his delivery and SELLER shall implement the change without awaiting the final outcome of the dispute.

13 SUSPENSION

13.1 BUYER may temporarily suspend the WORK or parts thereof by written notification to SELLER. SELLER shall without delay inform BUYER of the effects the suspension will have on the performance of the WORK. SELLER shall resume the WORK immediately after notification by BUYER.

13.2 During the suspension period, SELLER is entitled to compensation only for documented and necessary expenses in connection with demobilisation and mobilisation of personnel and for other substantiated costs reasonably incurred by SELLER as a direct consequence of the suspension.

14 TERMINATION

14.1 BUYER may, for its convenience, terminate the CONTRACT and cancel the WORK or parts thereof with immediate effect by written notification to SELLER.

14.2 Save for termination under article 3 and 16, BUYER shall pay the unpaid balance due to SELLER for that part of the WORK already performed and shall cover substantiated costs reasonably incurred by SELLER as a direct consequence of the termination.

14.3 BUYER's right to termination according to this article and article 16 is without prejudice to any other rights BUYER may have in contract or law.

15 GUARANTEE

15.1 SELLER guarantees the whole of the WORK against any defects which arise due to faulty materials, workmanship or design in the guarantee period as stated in sub-article 16.4.

15.2 SELLER is liable for any defects in connection with the WORK pursuant to article 16.

15.3 Notwithstanding anything in the specifications to the contrary, SELLER guarantees that throughout the guarantee period and, if any, prolonged or renewed guarantee period as mentioned in sub-articles 16.5 and 16.6, the WORK shall be capable of achieving the performance standards set forth in the specifications.

16 NON-PERFORMANCE

16.1 If SELLER's delivery is delayed, BUYER is entitled to liquidated damages amounting to 0.5% of the total CONTRACT PRICE per commenced calendar day. The liquidated damages shall not exceed 15% of the total CONTRACT PRICE.

16.2 If the delay is caused by gross negligence or wilful misconduct on the part of SELLER, BUYER may, instead of the liquidated damages, claim compensation for actual losses suffered due to the delay.

16.3 When a defect occurs for which SELLER is responsible, BUYER shall notify SELLER in writing of the defect within reasonable time after the defect has been discovered.

16.4 SELLER shall without undue delay and at his own costs rectify all defects arising in the guarantee period which shall be 24 months from DELIVERY DATE or 12 months from the date the delivered WORK is taken into use for its proper purpose, whichever is the later.

16.5 In the event that the WORK is out of function for a period due to SELLER's default, the guarantee period shall be prolonged for a period corresponding to the out of function period.

16.6 Parts which are replaced/repaired in accordance with the above guarantee provisions shall have a renewed guarantee period equal to the original guarantee period.

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16.7 SELLER shall under the guarantee pursuant to this article ensure that the WORK shall be rectified to comply with the CONTRACT. BUYER can demand replacement of defective WORK if he considers repair to be insufficient.

16.8 If SELLER fails to rectify the defect within a reasonable time, BUYER is entitled to rectify the defect himself or employ a third party to do so for SELLER's risk and account. In such cases, BUYER shall notify SELLER before commencement of the rectification work. BUYER is entitled to retain any amount due to SELLER sufficient to ensure such rectification of the WORK.

16.9 SELLER's failure to rectify defects within a reasonable time is considered to be a substantial breach of CONTRACT. The same applies for late deliveries where the maximum liquidated damages have incurred.

16.10 BUYER is entitled to claim compensation for any damages and losses suffered due to defects limited to the total CONTRACT PRICE.

16.11 If SELLER fails to fulfil his obligations according to the CONTRACT or becomes insolvent, BUYER may choose one or more of the following alternatives:

- a) demand a new delivery (partially or wholly),
- b) demand a price reduction,
- c) terminate the CONTRACT,
- d) claim compensation for damages and losses.

17 FORCE MAJEURE

17.1 Neither of the parties shall be considered in breach of an obligation under the CONTRACT to the extent the party can establish that fulfilment of the obligation has been prevented by force majeure.

17.2 Force majeure means an occurrence beyond the control of the party affected, provided that such party could not reasonably have foreseen such occurrence at the time of entering into the CONTRACT and could not reasonably have avoided or overcome it or its consequences.

17.3 The party invoking force majeure shall, as soon as possible, notify the other party of the force majeure situation, the cause of delay and the presumed duration thereof.

17.4 Each party is entitled to terminate the CONTRACT if the force majeure situation continues, or it is obvious that it will continue, for more than 30 days.

17.5 In the case of force majeure, each party shall cover its own costs resulting from the force majeure situation.

18 INTELLECTUAL PROPERTY RIGHTS

18.1 Drawings, documents, specifications and other technical documentation and computer programs provided by BUYER to SELLER, or which are developed mainly on the basis of such material, shall be the property of BUYER. The same applies to all copies of such material.

18.2 Drawings, documents, specifications and other technical documentation and computer programs or copies thereof provided by BUYER, shall not be used by SELLER other than for the purpose of the WORK and shall be returned to BUYER when the WORK is completed, unless otherwise agreed between the parties. No such material can be copied or disclosed to any third party without the prior written consent of BUYER.

18.3 Drawings, documents, specifications and other technical documentation and computer programs provided by SELLER to BUYER, or which are developed mainly on the basis of such material, shall be the property of SELLER, unless otherwise agreed between the parties. The same applies to all copies of such material. BUYER shall be entitled to use such material and copies for the purpose of utilising the WORK.

18.4 SELLER shall grant to BUYER an irrevocable, royalty-free, world-wide, non-exclusive license to all inventions which are under, or which prior to delivery of the WORK come under, SELLER's control, to the extent necessary for BUYER and BUYER's clients to utilise the GOODS.

18.5 SELLER shall also grant to BUYER an irrevocable, royalty-free, world-wide, non-exclusive license to inventions made by SELLER in connection with the WORK and which are based on technical information from both parties, without any of them providing the main part of such information.

18.6 SELLER shall indemnify and hold harmless BUYER against any claims by third parties resulting from infringement of patent or other industrial property rights in connection with the WORK, except to the extent that such an infringement results from the instructed use of drawings or specifications provided by BUYER.

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SELLER's responsibility relates to infringement both in the country where the WORK is to be used according to the CONTRACT and in the countries where the WORK is manufactured, assembled and prepared for delivery.

19 LIABILITY AND INSURANCES

- 19.1 SELLER shall indemnify BUYER from and against any claim concerning: a) personal injury to or loss of life of any employee of SELLER or SELLER's subcontractors, b) loss of or damage to any property of SELLER or SELLER's subcontractors arising out of or in connection with the WORK. This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of BUYER.
- 19.2 BUYER shall indemnify SELLER from and against any claim concerning: a) personal injury to or loss of life of any employee of BUYER, b) loss of or damage to any property of BUYER arising out of or in connection with the WORK. This applies regardless of any form of liability whether strict or by negligence, in whatever form, on the part of SELLER.
- 19.3 SELLER shall indemnify BUYER and hold harmless against any and all liability for death, disease or injury to any third party and loss of or damage to any third party property and against all claims, losses, damages, costs and expenses (including legal fees) resulting there from arising out of any act, omission or neglect by SELLER, its servants, subcontractors or agents in the performance of the CONTRACT.
- 19.4 BUYER shall indemnify SELLER from BUYER's own indirect losses and damages, and SELLER shall indemnify BUYER from SELLER's own indirect losses and damages. This applies regardless of any liability, whether strict or by negligence, in whatever form, on the part of either party. Indirect losses and damages according to this provision include but are not limited to: loss of earnings, loss of business opportunity, loss of profit, loss of use and loss of production.
- 19.5 SELLER shall maintain at his own expense all necessary insurances required for and adapted to his operations for the performance of the WORK. SELLER shall ensure that the insurance company waives all rights of subrogation against BUYER. Whenever requested by BUYER, SELLER shall provide an insurance certificate documenting that the relevant insurance requirements are fulfilled.

20 CONFIDENTIALITY

- 20.1 SELLER shall keep confidential all information received from BUYER and all information arising out of the CONTRACT that by its nature is confidential, including the terms of the CONTRACT. SELLER shall not divulge to a third party the said information without the written consent of the other BUYER, unless such information:
- a) is already known to the party in question at the time the information was received,
 - b) is or becomes part of the public domain (except by default of the receiving party),
 - c) is rightfully received from a third party without an obligation of confidentiality,
 - d) is required to be disclosed by law,
 - e) is independently developed by the party in question.

SELLER shall not make public the content of the CONTRACT or its existence unless accepted by BUYER.

- 20.2 Drawings, documentation or any other written material, software and printed material, in whole or in part shall not be copied under this CONTRACT except for the purpose of the fulfilment of the CONTRACT.

21 WAIVER

- 21.1 No waiver by BUYER of any breach of any of the terms and conditions of the CONTRACT shall be construed as a waiver of any subsequent breach whether of the same or of any other term or condition hereof. No waiver shall be validly made unless made in writing.
- 21.2 No failure or delay on the part of BUYER to exercise any power, right or remedy under this CONTRACT shall operate as a waiver thereof nor shall any single or partial exercise by the BUYER of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy.

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22 ASSIGNMENT OF THE CONTRACT

22.1 BUYER is entitled to assign his rights and obligations under the CONTRACT, fully or partly, to any affiliates or third party. SELLER may not assign his rights and obligations under the CONTRACT without BUYER's prior written consent.

23 APPLICABLE LAW AND DISPUTES

23.1 The CONTRACT shall be governed by and interpreted in accordance with the law of Scotland and the parties hereby submit to the nonexclusive jurisdiction of the Scottish Courts.

23.2 Disputes arising in connection with or as a result of the CONTRACT, and which are not resolved by mutual agreement, shall be settled by ordinary court proceedings within the jurisdiction of the Scottish Courts.