



BSW Group

GENERAL TERMS AND CONDITIONS OF PURCHASE

1. Definitions

- a. 'Affiliate' means in relation to BSW and the Supplier, any company which is a subsidiary or holding company of BSW or Supplier or a subsidiary of any such holding company where "subsidiary" and "holding company" shall have the respective meanings assigned to them under UK Companies Act 1985, section 736.
- b. 'Claims' means costs, claims, demands, proceedings, losses, liabilities and expenses (including legal expenses).
- c. 'Contract' means the contract formed by the acceptance of the Purchase Order and shall incorporate these General Terms and Conditions if specified thereon, as amended by any Special Terms and Conditions stated or referred to in the Purchase Order. If there is a conflict or ambiguity between these General Terms and Conditions and the Special Terms and Conditions, the latter shall prevail.
- d. 'BSW' means the BSW company named on the front of the Purchase Order and shall include BSW's legal personal representatives, successors and assigns.
- e. 'Goods' means the parts, tools, designs, patterns, equipment, materials and items to be supplied by the Supplier pursuant to the Contract.
- f. 'Purchase Order' means the purchase order form forming part of the Contract.
- g. 'Special Terms and Conditions' means the special terms and conditions, if any, referred to on the Purchase Order.
- h. 'Supplier' means the person or persons, firm or company named on the Purchase Order and engaged by BSW for the supply of the Goods ordered under the Contract hereinafter defined and shall include the Supplier's legal personal representatives, successors and assigns.

The headings in these conditions shall not be deemed to be part hereof or to be taken into consideration in the interpretation or construction of the Contract.

2. Acceptance and Modification

The Contract constitutes an offer by BSW to purchase the Goods from the Supplier subject to the terms and conditions herein. The Contract shall become binding between BSW and the Supplier upon signature acknowledging acceptance promptly. Alternatively, any delivery made in accordance with the Contract constitutes acceptance. Upon acceptance of the Contract, the terms and conditions appearing on the Purchase Order, these General Terms and Conditions and any Special Terms and Conditions constitute the entire agreement between BSW and the Supplier, and all such terms and conditions shall have precedence over any conditions appearing on any acceptance form or other document or letter emanating from the Supplier or any subcontractor performing the Contract, and such conditions shall have no effect whatsoever except insofar as they confirm the Contract or are expressly agreed in writing in the Contract. No variation to the Contract shall be binding unless agreed in writing by the authorised representatives of BSW and the Supplier.

3. **Delivery**

Subject to any contrary provisions in the Special Terms and Conditions, the following arrangements for delivery shall apply:-

- a. the Goods shall be delivered to the address indicated;
- b. unless otherwise agreed, the cost of delivery and transit insurance shall be borne by the Supplier;
- c. the Goods shall be labelled with BSW's Purchase Order number, item number, manufacturer's part number, and brief description;
- d. the Goods shall be delivered under cover of a packing list showing the Purchase Order number and details of the Goods supplied. All items and packages are to be marked with the Purchase Order number and BSW part number(s);
- e. all corrodible parts are to be protected where appropriate before packing, eg, with grease or a suitable protective varnish soluble in kerosene;
- f. where the Goods are ordered to a particular specification or code, appropriate documentation shall be supplied to evidence adherence to such specification or code;
- g. any damage to the Goods in transit must be notified to BSW immediately in writing;
- h. if the Goods are found to be damaged on arrival at the delivery point, the Supplier shall immediately provide a replacement at no extra cost to BSW.

4. **Indemnities**

- a. The Supplier shall be liable for and defend, indemnify and hold harmless BSW, its clients, its and their Affiliates, co-venturers, agents and other contractors and the respective personnel, employees, directors, officers and invitees of all the foregoing (all for the purposes of this clause called "the BSW Group") in respect of Claims arising from and in any way connected with the Contract for:
 - i) personal injury, death, disease or illness of Supplier's, and the BSW Group's personnel, employees, directors and officers;
 - ii) loss, loss of use, damage to or recovery of property belonging to the Supplier, and the BSW Group;
 - iii) personal injury, death, disease or illness, loss, loss of use, damage to or recovery of property of third parties.
- b. The indemnities and exclusions of liabilities given pursuant to the Contract shall apply irrespective of the negligence and/or breach of duty (statutory or otherwise) of the person to be indemnified.
- c. The indemnities given pursuant to the Contract shall be full and primary and shall apply in respect of the full liability of the indemnitee for Claims notwithstanding that the indemnitee may be entitled to contribution from any person.

- d.
 - i) The Contracts (Rights of Third Parties) Act 1999 shall apply to the Contract to the extent only that the third parties referred to in this Clause 4 shall be entitled in their own right to enforce the benefit only of the indemnities given to them in such Clause (but not in any other respect).
 - ii) In making a claim under the Contract, the remedies of such third parties shall be limited to claiming damages.
 - iii) Notwithstanding any other provision of the Contract, no third party shall be entitled to assign any benefit conferred on it pursuant to the Contract.
 - iv) No right of either party to agree any amendment, variation, waiver or settlement under or arising from or in respect of the Contract, or to rescind or terminate the Contract, shall be subject to the consent of any third party which has rights to enforce a term of the Contract by virtue of Clause d. i) above, even if as a result, that third party's right to enforce a term of the Contract will be varied or extinguished.

5. Invoicing and Payment

The Supplier's invoice may be issued following dispatch of the Goods and must be clearly referenced with the Purchase Order number and sent to the same address as shown for delivery of the Goods unless specified otherwise.

Unless otherwise agreed, invoices will be settled within 60 days of their receipt or of the date of receipt of the Goods, whichever is the later. BSW reserves the right to withhold payment for any of the Goods supplied which are not in accordance with specification or do not meet with BSW's approval.

BSW may withhold payment when any item on the invoice is in whole or in part disputed by BSW, in which case BSW shall inform the Supplier of the disputed portion and the Supplier shall without delay, issue a credit note to BSW for the amount in dispute. The undisputed portion of such invoice shall not be paid until such credit note has been received by BSW. The issue of such a credit note shall be without prejudice to the Supplier's right to receive payment for the disputed portion or part thereof upon settlement of the dispute.

BSW shall have the right at its own expense to audit all of the Supplier's records of every kind or pertaining to any cost chargeable by the Supplier under the Contract save only agreed lump sums and agreed unit rates. The Supplier shall keep and shall make such records available for 24 months after completion of the Contract.

6. Firm Price

BSW's financial commitment is limited to the price specified on the Purchase Order.

7. Acceptance or Rejection

Payment for the Goods under the Contract shall not constitute an acceptance thereof, but all Goods shall be received subject to BSW's acceptance or rejection. Defective Goods or Goods not in accordance with BSW's specifications may be returned to the Supplier for full credit or replacement at BSW's option and at the Supplier's risk and expense, including transportation charges both ways, without prejudice to BSW's further rights hereunder. BSW's representative may inspect the Goods at any reasonable time at the Supplier's works before dispatch. BSW shall notify the Supplier if it intends to inspect the Goods.

8. Warranty

- a. The Supplier warrants that the Goods supplied hereunder will be new, fit and sufficient for the purpose intended and that they will conform to the specifications, drawings or samples furnished or adopted by BSW and will be of satisfactory quality and free from defects in design, material and workmanship.
- b. During a period of twenty-four months after the date of delivery or, in the case of specialist plant and equipment, twelve months after the date of commissioning, the Supplier shall, with all possible speed and without cost to BSW, replace or repair the Goods or any part thereof found to be defective due to faulty material, workmanship or design or due to any act or omission of the Supplier and in these circumstances the Supplier's 24-month warranty shall apply to any such Goods which have been replaced or repaired. The Supplier shall be responsible for the prepayment of all transportation and other costs incurred by BSW in effecting such replacement or repair at the point of use.

9. Assignment and Sub-Contracting

The Supplier shall not assign or subcontract all or any part of its obligations hereunder without BSW's prior written consent. BSW's consent to subcontract shall not relieve the Supplier of any liability or obligation hereunder.

10. Changes in Specification

Notwithstanding Clause 2 of these General Terms and Conditions, BSW may at any time make changes in writing relating to the Contract including changes in the drawings or specifications method of shipment, quantities, packing, or time or place of delivery. If such changes result in an increase or decrease in cost of, or time required for, the performance of the Contract, an equitable adjustment shall be made in the Contract price, delivery schedule or both. Any claim or adjustment by the Supplier must be approved by BSW in writing before the Supplier proceeds with such change.

11. Ownership and Risk

The Supplier warrants full, clear and unrestricted title to BSW to the Goods, free and clear of any and all liens, restrictions, reservations, security interests and encumbrances. Once the Goods have been identified to the Contract the property in them shall pass to BSW. Risk of loss or damage to the Goods shall pass to BSW when delivery of the Goods has been accepted by BSW. Signature of a delivery note by a person, other than a person expressly authorised for that purpose, shall not alone constitute acceptance.

12. Tools, Designs, Patterns And Equipment

Unless otherwise agreed in writing all tools, designs, patterns and equipment or materials of every description furnished by the Supplier or to the Supplier by BSW, and specifically paid for by BSW, and any replacement thereof, or any materials affixed or attached thereto shall be and remain personal property of BSW. Such property, and whenever practical each individual item thereof shall be plainly marked or otherwise adequately identified by the Supplier as "Property of BSW". Such tools, designs, patterns and equipment shall be maintained in such condition as to produce quality parts to blueprint specifications and when necessary shall be replaced by the Supplier without expense to BSW. Such property while in the Supplier's custody or control shall be held at the Supplier's risk, shall be kept insured by the Supplier at the Supplier's expense in an amount equal to the replacement cost and shall be subject to removal at BSW's written request in which event the Supplier shall prepare such property for shipment and shall redeliver to BSW in the same condition as originally received by the Supplier, reasonable wear and tear excepted. The Supplier shall reimburse BSW for replacement or repair as appropriate, necessitated by all losses and damage to such tools, designs, patterns, and equipment reasonable wear and tear excepted.

13. Proprietary Rights

If any of the Goods supplied under the Contract are made according to designs, specifications or blueprints or by means of any tools, designs, patterns and equipment which are the property of BSW, the Supplier agrees that the same goods will not be furnished to any other party and that such tools, designs, patterns, equipment, designs, specifications, blueprints will not be used to manufacture goods furnished to any other party without BSW's written consent. The Supplier agrees by acceptance of the Contract to keep all designs, information, blueprints and engineering data with respect to the Contract confidential and not to make use of but to assign to BSW each invention, improvement and discovery relating thereto (whether or not patentable) conceived or reduced to practice in the performance of the Contract by any person employed by or working under the directions of the Supplier. Upon completion of the Contract the Supplier shall hand over to BSW all such designs, information, blueprints and engineering data in its possession and cause its employees to sign any and all papers necessary or required to enable BSW to file applications for patents throughout the world and to obtain title thereto without prejudice to the other rights of BSW hereunder.

14. Patents

The Supplier shall be liable for and shall defend and indemnify BSW, its Affiliates, its clients and their co-venturers against all Claims arising from infringement of any patent, trademark, registered design, copyright or other proprietary right by any third party in respect of the carrying out by the Supplier of its obligations under the Contract and this condition shall remain binding on the Supplier notwithstanding the completion or termination of the Contract. All copyrights, design rights, patents and related applications arising out of and developed in connection with the Contract shall vest in BSW at its exclusive disposal.

15. Time of Delivery

Promptness of delivery of the Goods ordered is of the essence. If at any time the Supplier has reason to believe that deliveries will not be made within the time specified herein, written notice setting forth the cause of delay and the best probable delivery date must be given promptly to BSW. If such failure or delay by the Supplier shall threaten to impair BSW's ability to meet its delivery schedules BSW may at its option and without liability to the Supplier cancel, by written notice to the Supplier, the affected portions of the Contract. The Supplier shall not be liable in damages for delays and defaults in deliveries, nor BSW for failure to take delivery, if occasioned by causes beyond the control and without the fault or negligence of either the Supplier or BSW respectively.

16. Compliance With Law

The Supplier shall comply with all applicable statutes, rules, regulations and executive orders in any way connected with or applicable to the production of the Goods or the performance of the services specified herein.

17. Waiver

The failure of BSW to insist upon the performance of any of the terms and conditions of the Contract or to exercise any right hereunder shall not be construed as a waiver of the future performance of any such term or condition or the future exercise of such right but the obligation of the Supplier with respect to such future performance shall continue in full force.

18. Termination

BSW may at its absolute discretion suspend or terminate the Contract with or without cause at any time and BSW agrees to pay the Supplier for all Goods satisfactorily completed up to the time of termination and reasonable and substantiated costs arising from such suspension or termination, as evidenced by documentation satisfactory to and verified by BSW, except that should termination be due to the Supplier's default or breach, the Supplier shall not be entitled to any further payment upon termination.

19. Insolvency

BSW shall have the right, without prejudice to any other rights and remedies which BSW may have to cancel and terminate the Contract forthwith upon the happening of any one or more of the following events: (i) the Supplier's insolvency or commission of an act of bankruptcy, (ii) if an order is made or an effective resolution is passed for the winding up of the Supplier (other than for the purposes of a solvent scheme of re-organisation or amalgamation), (iii) the execution by the Supplier of an assignment for the benefit of creditors, (iv) appointment of a receiver or trustee of or for the Supplier or its business or, (v) if at any time in the judgment of BSW the Supplier's financial condition shall be such as to endanger its performance hereunder and the Supplier shall not be entitled to any further payment upon such termination beyond sums already due. The acceptance of the Goods or performance after the occurrences of any of the above events shall not waive the rights of BSW to cancel and terminate the Contract nor shall cancellation hereunder waive BSW's rights to any damages to which BSW is otherwise entitled.

BSW may at its sole discretion give such receiver, liquidator or other person the option of carrying out the Contract subject to its providing an acceptable guarantee for the due and faithful performance of the Contract.

20. Confidentiality

All information obtained by the Supplier, or its subcontractors, in the course of and in connection with the Contract or concerning BSW or its clients, shall be held confidential by the Supplier and shall remain the property of BSW and shall not be divulged by the Supplier, or its subcontractors to any third party without the prior written consent of BSW. All such data must not be removed from BSW's or its clients' premises without BSW's approval. All documents, drawings and other records containing such information, and any copies thereof, shall upon completion of the Contract, or its earlier termination, be returned to BSW. The Supplier agrees not to use for publicity purposes any photographs, drawings and/or materials in connection with the performance of the Contract without obtaining the prior written consent of BSW. This clause shall remain binding on the Supplier notwithstanding completion or termination of the Contract.

21. Force Majeure

No failure or omission by either party to carry out or observe any of the stipulations, conditions or obligations to be performed hereunder shall, except as herein expressly agreed to the contrary, give rise to any claim against such or be deemed to be a breach of contract if any such failure or omission arises from cause beyond the reasonable control of such party and is attributable to acts of God, fire, flood, explosion, war, rebellion, boycotts, strikes, lock-outs or acts of government or other competent authorities. For the avoidance of doubt, this Clause 21 shall not apply to mechanical breakdown of equipment provided by the Supplier.

Without prejudice to the provision of Clause 18, if a Force Majeure lasts ten (10) days or more the parties hereto shall consult and agree on a course of action which may include termination of Contract.

22. Tax

The Supplier shall pay all taxes, charges and imposts incurred by it in performance of the Contract hereunder and shall indemnify and hold BSW harmless from and against any and all claims for any such taxes, charges or imposts so levied against BSW.

23. Business Ethics

(a) The parties shall uphold the highest standards of business ethics in the performance of the Contract.

(b) Neither party shall knowingly involve itself in any business in connection with, or use information arising from, the Contract, in any manner which conflicts with the interests of the other party. In particular, but without limitation, neither of the parties shall, directly or indirectly, receive, give, or offer to give, anything of material value from or to any employee, director or agent of the other party or its other contractors, sub-contractors and suppliers, government officials or any other persons, which could be regarded as an improper inducement to any party. Any breach of this obligation shall constitute a material breach of the Contract.

24. Severance

Any provision herein, which is or becomes illegal or unenforceable shall be severed from the Contract and shall not affect the validity of the remaining provisions hereof.

25. Law

The Contract shall be governed and construed in accordance with the Laws of England and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.