

## MODEL FCO GOODS CONTRACT (SHORT FORM - VALUE NOT EXCEEDING £100,000)

### GOODS CONTRACT

#### 1. DEFINITIONS

In these terms and conditions:

- 1.1 The **PURCHASER** means the Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office, and includes his authorised agents.
- 1.2 The **SELLER** means the person, firm or company to whom the PURCHASE ORDER is addressed, and its permitted sub-contractors and assignees.
- 1.3 The **PURCHASE ORDER** means the written agreement for the supply of GOODS on the terms and conditions set out in these GENERAL CONDITIONS, in the SPECIFICATION and in any other relevant documents attached hereto or referred to herein.
- 1.4 The **GOODS** means those goods, commodities, materials or other articles described in the PURCHASE ORDER, including the constituent parts or materials of which the GOODS are comprised.
- 1.5 The **SPECIFICATION** means the PURCHASER'S description of the GOODS to be supplied by the SELLER set out in the PURCHASE ORDER or in any other document or documents referred to therein. Such SPECIFICATION shall incorporate all information necessary to fully define the GOODS to be supplied and shall include where necessary technical data, plans, drawings, relevant British or other Standards, Quality Requirements, etc.
- 1.6 The **FOLACT** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time and any guidance issued by the information Commissioner in relation to such legislation.

#### 2. DELIVERY

- 2.1 The GOODS shall be delivered by the SELLER in accordance with the terms and conditions in the PURCHASE ORDER.
- 2.2 Unless expressly agreed otherwise the GOODS shall be delivered during the PURCHASER'S normal business day. Delivery and any other costs associated with the supply of the GOODS shall be at the SELLER'S own expense unless otherwise stated on the PURCHASE ORDER.
- 2.3 Any Delivery Date or time specified in the PURCHASE ORDER shall be of the essence.
- 2.4 Delivery terms in the PURCHASE ORDER are as defined in "INCOTERMS 1990 EDITION", or any official revision thereof, issued by the Headquarters of the International Chamber of Commerce in Paris, France.
- 2.5 The GOODS shall remain at the SELLER'S risk until delivery is effected in accordance with this PURCHASE ORDER.
- 2.6 The PURCHASER'S signature given on any delivery note or other document presented for signature in connection with delivery of the GOODS is evidence only of the number of packages received, and not evidence of actual quantity, quality or condition of the GOODS.
- 2.7 The PURCHASER shall be entitled to return any goods to the SELLER for a full refund within 30 days of delivery without incurring any costs or charges whatsoever.
- 2.8 If the PURCHASER cancels the whole or any part of a PURCHASE ORDER pursuant to Clause 2.7, it shall only be obliged to pay the SELLER in respect of those items it has expressly accepted.

#### 3. OWNERSHIP

- 3.1 The property in the GOODS shall pass on delivery or on payment of the invoiced price whichever is the earlier.

#### 4. PAYMENT

- 4.1 Prices shall be as specified in the PURCHASE ORDER and all invoices shall be denominated in Sterling, save where otherwise agreed.

4.2 Payment shall be made net cash on the terms set out in the PURCHASE ORDER following PURCHASER'S receipt of the SELLER'S correct and properly due invoice.

4.3 The PURCHASER shall pay the SELLER within 30 days of receipt of the correct and duly submitted invoice. Payments which are not received by the SELLER when due will be considered overdue and remain payable by the PURCHASER together with interest for late payment from the date payable both at the rate of 2% per annum above the base rate for the time being of [Barclays Bank plc]. This interest will accrue daily and be payable on demand.

4.4 Any sum which is recoverable from or payable by the SELLER under the PURCHASE ORDER may be deducted from or reduced by any sum or sums then due, or which may thereafter become due to the SELLER under or in respect of the PURCHASE ORDER or any other contract with the PURCHASER or any other government department.

4.5 No increase in price shall be made or accepted unless agreed in writing by the PURCHASER.

#### 5. ENTIRE AGREEMENT AND VARIATIONS

5.1 The PURCHASE ORDER constitutes the entire agreement and understanding between the PURCHASER and the SELLER and supersedes all prior agreements and understandings, whether written or oral. Neither the PURCHASER nor the SELLER shall be entitled to rely on or have any remedy in respect of any statement, representation or warranty made prior to the date of the PURCHASE ORDER in respect of the subject matter of the PURCHASE ORDER, unless it was made fraudulently or expressly stipulated in the PURCHASE ORDER.

5.2 Any variation to the terms and conditions of the PURCHASE ORDER must be agreed in writing by the parties.

#### 6. INSPECTION AND TESTING

6.1 The PURCHASER may at any reasonable time visit the offices, workshops or other relevant premises of the SELLER or its sub-contractors for the purposes of inspecting or testing the finished GOODS or of checking progress, inspecting, testing or witnessing the tests of the materials used in the fabrication or manufacture of the GOODS by the SELLER or its sub-contractors.

6.2 In the event that the GOODS fail to pass any tests specified in the PURCHASE ORDER or otherwise fail to comply with the SPECIFICATION, the SELLER will promptly rectify such deficiencies at its expense. In the event of continuing or persistent failure of the GOODS to pass such tests or meet the SPECIFICATION the PURCHASER may terminate the PURCHASE ORDER pursuant to Clause 8 below.

6.3 Failure by the PURCHASER to inspect, test or witness tests or to discover defects or failure to reject the GOODS supplied by the SELLER which are not strictly in accordance with the requirements of the PURCHASE ORDER shall not relieve the SELLER of its responsibilities and liabilities under the PURCHASE ORDER.

#### 7. ASSIGNMENT AND SUB-CONTRACTING

7.1 The SELLER shall not assign nor sub-contract this PURCHASE ORDER or any part thereof without the prior written permission of the PURCHASER. Any such permitted sub-contracting shall not relieve the SELLER of its obligations under the PURCHASE ORDER and shall not create any contractual relationship between the PURCHASER and the SELLER'S sub-contractor(s).

7.2 The SELLER shall safeguard the PURCHASER'S interest by incorporating the terms and conditions of the PURCHASE ORDER into any permitted assignment or sub-contract.

#### 8. TERMINATION

8.1 Should the SELLER in the sole judgment of the PURCHASER:

- (i) fail to provide satisfactory performance of the requirements of this PURCHASE ORDER; or

- (ii) fail to fulfil any of its obligations hereunder; or
- (iii) become bankrupt or make an arrangement or composition with its creditors or have a winding up petition made against it or have a liquidator or receiver appointed or enter into liquidation either voluntarily or compulsorily (other than for the purpose of solvent amalgamation or reconstruction) or like proceedings in any jurisdiction in which the SELLER is incorporated,
- then the PURCHASER shall be entitled to:
- (a) terminate the PURCHASE ORDER (or such part of the PURCHASE ORDER that the PURCHASER does not accept) by giving seven days notice in writing to the SELLER or liquidator or to any person in whom this PURCHASE ORDER may become vested;
- (b) grant such receiver or liquidator or other person the option of providing the GOODS under the terms of this PURCHASE ORDER subject only to its submission of a written guarantee for the due and faithful performance of the PURCHASE ORDER.
- 8.2 Such action by the PURCHASER shall be without prejudice to any rights the PURCHASER may have arising from this PURCHASE ORDER or any prior breach thereof. In particular, termination of the PURCHASE ORDER under this clause shall be without prejudice to the PURCHASER'S rights to damages, including any additional costs incurred in having the GOODS repaired or supplied by others at a cost in excess of the amount stated in the PURCHASE ORDER.
- 8.3 If this PURCHASE ORDER is terminated under this clause the SELLER shall not be entitled to payment for any costs incurred after the effective date of termination nor shall the PURCHASER be held liable for damages howsoever arising or for loss of anticipated profits on account of such termination.
9. **INTELLECTUAL PROPERTY RIGHTS**
- 9.1 The SELLER warrants and represents that none of the GOODS supplied under this PURCHASE ORDER nor any devices or processes embodied therein constitutes or involves an infringement of any existing copyright, patent, trademark, registered design or any other intellectual property rights and the SELLER hereby agrees to hold harmless and indemnify the PURCHASER against all costs, charges, expenses and damages arising from any claim that the use or sale of any of the GOODS so supplied constitutes or involves any such infringements.
- 9.2 The SELLER warrants and represents that the design, quality and the material or components of the GOODS to be supplied under this PURCHASE ORDER comply in all respects with any applicable Statute, Statutory Order or other such instruments in force at the time of supply, including, without limitation, the Sale of Goods Act 1979, by the Supply of Goods & Services Act 1982, by the Sale and Supply of Goods Act 1994.
- 9.3 Any drawings, specifications, data, documents, and other information provided by the PURCHASER to the SELLER in connection with the PURCHASE ORDER and all intellectual property rights therein shall remain the property of the PURCHASER and the SELLER shall at all times keep confidential all such information and return it to the PURCHASER on demand or upon completion of the PURCHASE ORDER.
- 9.4 Save with respect to any pre-existing SELLER intellectual property rights, the intellectual property rights in all GOODS specifically created by the SELLER under the PURCHASE ORDER shall vest immediately and exclusively in the PURCHASER and the SELLER hereby waives all moral rights in such specifically created GOODS. In respect of such pre-existing intellectual property rights, the SELLER hereby grants to the PURCHASER an irrevocable royalty free licence to use, copy or modify the same, or to license such matter to third parties for the PURCHASER'S business purposes.
10. **WARRANTIES AND GUARANTEES**
- 10.1 The SELLER warrants and represents that the GOODS will comply with the SPECIFICATION and will be free from defects or failures (other than those due to incorrect usage or operation by the PURCHASER) for a period of one year after delivery to the PURCHASER or such longer period as may be specified in the PURCHASE ORDER and shall be equal in all respects to relevant samples or patterns provided or accepted by the PURCHASER.
- 10.2 Pursuant to the above warranty the SELLER guarantees that after receipt of written notice from the PURCHASER the SELLER will promptly repair or replace, at the PURCHASER'S option and to the PURCHASER'S entire satisfaction, any defective GOODS at no additional cost to the PURCHASER.
- 10.3 In addition to its rights under clause 10.2, the PURCHASER shall be entitled to reject those GOODS that do not meet the provisions of clause 10.1. If by the nature of the GOODS any defects or any failure to conform with clause 10.1 does not or would not become apparent (despite the carrying out of any examination) until after use, the SELLER may reject the same even after a reasonable period of use.
- 10.4 Thereafter, the provisions of clause 10.1 shall apply to the repaired or replaced GOODS.
11. **FORCE MAJEURE**
- 11.1 No delay or failure in performance by either party hereto shall constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if such delay or failure is caused by Force Majeure.
- 11.2 Force Majeure shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which the said party is unable to prevent or provide against by the exercise of reasonable diligence and shall include, but not be limited to: acts of God or the public enemy; expropriation or confiscation of facilities; any form of Government intervention; war; rebellion; terrorist activity; sabotage or riots; floods; unusually severe weather conditions; fires, explosions, or other catastrophes or other similar occurrences.
12. **CONFIDENTIALITY**
- 12.1 The SELLER must:
- (i) not pass on any information obtained during or in connection with the performance of the PURCHASE ORDER except where necessary for the performance of the PURCHASE ORDER or where authorised;
- (ii) not contravene the Official Secrets Acts 1911 to 1989 or any Act amending or replacing the same;
- (iii) familiarise itself with these Acts and take all reasonable steps to ensure that its suppliers, and its and their employees and agents are familiar with them; and
- (iv) take all reasonable steps to ensure that these people comply with paragraphs (i) and (ii) above.
13. **BUSINESS ETHICS AND CONFLICT OF INTEREST**
- 13.1 The SELLER shall establish and maintain appropriate business standards, procedures and controls including those necessary to avoid any real or apparent impropriety or to prevent any action or conditions which could result in conflict with the PURCHASER'S best interests. This obligation shall apply to the activities of the employees and agents of the SELLER in their relations with the servants or employees of the PURCHASER and third parties arising from the PURCHASE ORDER. SELLER'S efforts shall include, but not be limited to, taking all reasonable steps to prevent its employees or agents from making, receiving, providing or offering gifts or entertainment of more than nominal value, payments, loans or other considerations to anyone for the purpose of influencing individuals, firms or bodies corporate to act contrary to the PURCHASER'S best interests.
14. **INDEMNITY**
- 14.1 The SELLER agrees to indemnify the PURCHASER against any loss or damage sustained by the PURCHASER arising directly or indirectly from the SELLER'S failure to comply with its obligations under the PURCHASE ORDER.
- 14.2 In the event of any third party claim that the GOODS infringe any third party intellectual property rights, the SELLER shall forthwith do all things and take such action (including procuring any required licenses, consents or authorisations or modifying or replacing any infringing item) without charge to the PURCHASER as shall be necessary to prevent or remedy (without detracting from the overall functions or performance) any infringement, provided that the SELLER shall not act in any way which shall prejudice the intellectual property rights of the PURCHASER; the SELLER shall at all times act in such a way as to minimise interruption and disruption to the operation of the PURCHASER'S business.
15. **LIENS**
- 15.1 The SELLER shall not claim any lien, attachment or other such right over or in connection with the GOODS, and shall indemnify the PURCHASER against any and all liens, attachments or other such rights asserted by persons who are, or who claim to be, sub-contractors, agents or assignees of the SELLER.
16. **APPLICABLE LAW**
- 16.1 This PURCHASE ORDER shall be governed by English Law and the parties agree to submit to the jurisdiction of the English Courts.

17. **GENERAL**

- 17.1 The above terms and conditions are without prejudice to the PURCHASER'S rights and remedies at law or otherwise including in respect of the FOI ACT.
- 17.2 In the event that the SELLER has to design, develop or manufacture goods specified on the PURCHASE ORDER specifically for the PURCHASER, the SELLER shall submit to the PURCHASER a prototype and/or plans for approval. The SELLER must obtain written confirmation from the PURCHASER that the prototype and/or plans have been accepted and full production of the goods can commence before commencing the work. The PURCHASER will not be liable to reimburse any costs incurred by the SELLER prior to receipt of this written confirmation.
- 17.3 The SELLER shall have in force and maintain at the SELLER's cost such policies of insurance with a reputable and authorised insurer that give adequate levels of insurance cover in respect of all of the SELLER's liabilities and obligations to the PURCHASER in relation to the PURCHASE ORDER.
- 17.4 Failure by either party to exercise or enforce any right conferred by this PURCHASE ORDER shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or any other right on any later occasion.
- 17.5 If any provision in the PURCHASE ORDER is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such provision will be severed from the remainder of the PURCHASE ORDER which will continue to be valid and enforceable to the fullest extent permitted by law.
- 17.6 For the purpose of the Contracts (Rights of Third Parties) Act 1999, the provisions in the PURCHASE ORDER do not and are not intended to give any rights, or any right to enforce any of its provisions, to any person who is not a party to it.

