

# ACCORD HOUSING ASSOCIATION SUPPLIER TERMS & CONDITIONS

## Purchase Order Terms & Conditions

No terms or conditions put forward at any time by the Supplier shall form part of the Purchase Order. These Terms & Conditions take precedence over and operate to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

All of these Terms & Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

## 1. DEFINITIONS:

"Company" means the "ACCORD Housing Association Limited CBS Registration Number 27052R Company named on the Purchase Order;

"Supplier" means the company, firm or individual providing Goods and/or Services to the Company pursuant to the Purchase Order;

"Purchase Order" means the form issued by the Company to the Supplier describing the Goods and/or Services and incorporating these Terms & Conditions;

"Goods" means the goods described in the Purchase Order; and

"Services" means the services described in the Purchase Order.

## 2. SERVICES: Where the Purchase Order relates to Services:

1. The Supplier shall perform the Services with reasonable skill, care and diligence in accordance with best practice in the Supplier's industry.

a. The Supplier shall meet any performance dates for the Services specified in the Purchase Order or that the Company notifies to the Supplier. Time is of the essence.

b. The Supplier shall discuss the progress of the Services with the Company on a regular basis and shall advise the Company promptly of any problems or difficulties encountered in the performance of the Services.

c. The Supplier shall provide additional services as needed to correct any defects or deficiencies in the Services and shall bear all costs related to or arising from the Supplier's defective or deficient performance of the Services at no additional cost to the Company.

d. The Supplier shall maintain complete and accurate records of the time spent by it in providing the Services and shall allow the Company to inspect such records at all reasonable times on request.

e. The Company shall provide the Supplier with reasonable access at reasonable times to the Company's **premises/and or Sites** for the purposes of providing the Services.

## 3. GOODS:

Where the Purchase Order relates to Goods:

a. The Supplier undertakes that all Goods supplied will (i) be of satisfactory quality and fit for the purpose for which they are required and for any particular purpose made known by the Company to the Supplier, (ii) be free of defects in design, materials and workmanship, (iii) comply with the express terms of the Purchase Order, (iv) match any descriptions given or samples shown to the Company at the time of the Purchase Order and (v) comply with any specifications of any international and/or British Standards Institution (or equivalent) which are relevant to the Goods **at the date/and or supply** of the Purchase Order.

b. Time of delivery is of the essence.

c. All Goods supplied under the Purchase Order must be properly packed, marked and secured (in accordance with the Company's instructions and any statutory requirements or requirements of the carriers) and shall be delivered at the Supplier's risk to the address on the Purchase Order, or such other place as the Company may advise, during normal working hours and by the required date specified on the Purchase Order.

d. Title to the Goods shall pass to the Company on delivery. Risk in the Goods remains with the Supplier until acceptance of the Goods by the Company.

e. The Supplier shall, free of charge, repair or replace (at the Company's discretion) any Goods damaged in transit or defective upon delivery.

## 4. PRICE:

The price for the Goods and/or Services shall be as stated on the Purchase Order. The price for the Goods shall be inclusive of the costs of packaging and delivery. No extra charges shall be effective unless agreed in writing by the Company.

## 5. PAYMENT:

- a. Invoices may be submitted by the Supplier to the Company after the Goods and/or Services have been received and accepted by the Company as being in accordance with the requirements set out in the Purchase Order. No sum may be invoiced more than six months after delivery of the Goods and/or performance of the Services. Each invoice shall include such supporting information required by the Company to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- b. The Company is an end user for the purposes of section 55A of the Value Added Tax Act 1994 (reverse charge for building and construction services). The Supplier must issue the Company with a normal VAT invoice in connection with the supply of the Goods and/or Services with VAT charged at the appropriate rate. The Company will not account for the reverse charge.
- c. The Company will pay all undisputed invoices by the end of the month following the month in which a correctly rendered invoice was received, to a bank account nominated and validated by the Supplier.
- d. No payment made by the Company to the Supplier shall be construed as evidence of acceptance of the Goods and/or Services or a waiver of the Company's right to demand the correction of any defect or deficiency.
- e. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Company to the Supplier.

## 6. HEALTH & SAFETY:

The Supplier represents and warrants to the Company that the Supplier has satisfied itself that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that the Supplier has made available to the Company adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when handled, stored and put to use by the Company the Goods will be safe and without risk to health. The Supplier shall indemnify the Company against all actions, suits, claims, demands, losses, charges, costs and expenses which the Company may suffer or incur as a result of or in connection with any breach of this clause 6.

## 7. INSPECTION OF GOODS:

- a. The Supplier shall permit the Company or its authorised representative to make any inspections or tests as the Company may reasonably require at the Supplier's premises and on the Company's premises following delivery and installation of the Goods, and the Supplier shall provide such assistance as the Company reasonably requires in order to complete such inspections or tests free of all charges. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Company of any rights or remedies in respect of the Goods. The Supplier shall provide to the Company free of charge a copy of all test reports and data.
- b. The Company may by written notice to the Supplier reject any Goods which fail to meet the requirements specified in the Purchase Order. Such notice shall be given within a reasonable time after delivery of the Goods concerned. If the Company rejects any Goods pursuant to this clause 7 the Company shall be entitled to (without prejudice to its other rights and remedies), at the Company's sole and absolute discretion and promptly, without undue delay and within an agreed timescale, either (i) have the Goods repaired by the Supplier at the Supplier's cost; or (ii) have the Goods replaced with Goods which comply in all respects with the requirements specified in the Order at the Supplier's cost; or (iii) terminate the Purchase Order and obtain a refund in full in respect of all monies paid for such Goods plus any additional costs and expenses reasonably incurred by the Company due to the rejection of the Goods.
- c. The guarantee period applicable to Goods shall be 12 months from acceptance of the Goods (subject to any alternative guarantee arrangements agreed in writing between the Company and the Supplier). If the Company gives notice in writing to the Supplier of any defect in and any damage to any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Company may have) as quickly as possible remedy such defects promptly and without undue delay (whether by repair or replacement as the Company shall elect) without cost to the Company and at the Company's premises specified on the Purchase Order.

## 8. INDEMNITY:

To the fullest extent permitted by law, the Supplier shall indemnify the Company, its officers, directors, employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses and all interest, penalties, legal costs and other reasonable professional costs and expenses), which the Company its officers, directors, employees and agents may suffer or incur arising out of or in connection with:

- a. any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Supplier, its employees or subcontractors; and
- b. any act or omission of the Supplier, its employees and subcontractors arising out of the performance of the Purchase Order, the supply of the Goods or the performance of the Services.

This clause 8 shall survive termination of the Purchase Order.

## **9. INSURANCE:**

The Supplier shall maintain with a reputable insurance company the following insurances:

- a. Public Liability Insurance (including Product Liability) with a limit of indemnity of not less than £5 million per occurrence or series of occurrences arising out of any one event in aggregate in any one year.
- b. Where the Purchase Order relates to Services, Professional Indemnity Insurance with a limit of indemnity not less than £5 million per occurrence or series of occurrences arising out of any one event in aggregate in any one year.
- c. Goods in Transit Insurance in respect of the physical loss of, or damage to, the Goods until delivery to the Company for their full replacement value. Such policy shall be endorsed to indemnify both the Company and the Supplier as principles.

Such insurances shall be maintained for the period of the Purchaser Order and any warranty period provided with the Goods and/or Services. At the Company's request the Supplier shall produce and shall use reasonable endeavours to cause any subcontractor to produce, for inspection by the Company documentary evidence that the insurances are being properly maintained.

## **10. TERMINATION:**

a. Without prejudice to its other rights or remedies, the Company may terminate the Purchase Order:

(i) with immediate effect if the Supplier (a) breaches any of the terms and conditions of the Purchase Order and fails to remedy the breach within 7 days of written notice or (b) becomes bankrupt, insolvent, enters into liquidation, appoints a receiver, makes or offers to make any arrangement with its creditors or such other similar event;

(ii) for convenience by giving the Supplier two weeks' written notice.

b. In the event of termination, the Supplier shall be entitled to payment for the cost of Goods supplied and/or Services performed up to and including the date of termination. The Supplier agrees that such payment will be the Supplier's sole remedy in the event of termination and the Supplier will not be entitled to any further payment.

c. Termination does not affect the rights of either party accrued up to the effective date of such termination.

## **11. INTELLECTUAL PROPERTY RIGHTS:**

a. Except to the extent that the Goods and any output of the Services contain designs and specifications furnished by the Company, none of the Goods or Services will infringe any patent, trade mark, registered design, copyright or other intellectual property right of any third party and the Supplier shall indemnify the Company against all actions, suits, claims, demands, losses, charges, costs and expenses which the Company may suffer or incur as a result of or in connection with any breach of this clause 12.

b. All rights (including ownership, moral and copyright) in any specifications, instructions, plans, drawings, patterns, models, designs or other material ("Materials") created by the Supplier pursuant to the Purchase Order shall vest solely in the Company and the Supplier shall not (except to the extent necessary for the implementation of the Purchase Order), without prior written consent of the Company, use or disclose any such Materials.

## **12. CONFIDENTIALITY:**

Each party undertakes that it shall not disclose to any person (except its employees, officers and representatives who need to know for the purposes of carrying out its obligations under the Purchase Order) any confidential information concerning the affairs, customers, clients or suppliers of the other party, except as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## **13. COMPLIANCE WITH LAWS:**

The Supplier shall comply with all statutes, orders, regulations and other laws applicable to the Goods and/or Services and shall indemnify the Company against all losses, claims, liabilities, expenses, proceedings or otherwise arising as a result of the Supplier's non-compliance with the same.

## **14. FORCE MAJEURE:**

Neither party shall have any liability for any delay or default in the performance or completion of the Purchase Order if such delay or default is caused by events beyond its reasonable control. The party affected by such circumstances shall give the other party prompt written notice setting out the details of the force majeure and the other party shall grant such extension of time as may be reasonable for the performance and completion of the Purchase Order. If the circumstances of force majeure persist for more than 60 days from the date of written notice either party shall have the right to cancel the Purchase Order with immediate effect by giving written notice to the other party.

#### **15. ASSIGNMENT AND SUBCONTRACTING:**

The Supplier shall not assign, transfer or subcontract any of its rights or obligations under the Purchase Order or any part thereof without the prior written consent of the Company. No assignment or subcontracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities, liabilities or obligations under the Purchase Order.

#### **16. CORRUPT GIFTS:**

Either party shall be entitled to cancel the Purchase Order immediately upon written notice if the other party or its officers, employees or agents are found to have made, offered, accepted or taken or agreed to make or take any gift, bribe or consideration of any kind from any person or body as an inducement or reward for showing favour or disfavour to any person or for doing any action in relation to or for the purposes of offering or obtaining an advantage in relation to the Purchase Order or where such action is in contravention of the Bribery Act 2010.

#### **17. DATA PROTECTION:**

Both parties will comply with all applicable requirements of the General Data Protection Regulation (EU 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time.

(i) unless/until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK (ii) any successor legislation to the GDPR or the Data Protection Act 1998; the LED and any Applicable national implementing Laws as amended from time to time; the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) Applicable Law about the processing of personal data and privacy which includes The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), The Electronic Communications Data Protection Directive 2002/58/EC, The Privacy and Electronic Communications (EC Directive) Regulations 2003.

#### **18. PUBLICITY:**

The Supplier shall not refer to the Company or the Goods and/or Services in any advertisement or other promotional material without the Company's prior written consent.

#### **19. NO PARTNERSHIP:**

Nothing in the Purchase Order is intended to, or shall be deemed to, constitute a partnership of any kind between the parties.

#### **20. ENTIRE AGREEMENT:**

The Purchase Order constitutes the entire agreement between the Company and the Supplier relating to the supply of the Goods and Services and supersedes all previous agreements and understandings (whether written or oral).

#### **21. NOTICES:**

Any notice given under or pursuant to the Purchase Order must be in writing and may be sent by hand or by post to the address shown on the Purchase Order. A notice sent by hand shall be deemed served on the date of delivery unless delivered after 5pm in which case it will be deemed served on the next working day. A notice sent by post shall be deemed served at the expiration of 48 hours after the time of posting if the end of the period falls before 5pm on a working day band otherwise on the next working day.

#### **22. VARIATION:**

The terms and conditions of the Purchase Order may only be varied with the written agreement of the Company.

#### **23. WAIVER:**

No failure or delay by a party in exercising any right, power or privilege under the Purchase Order will operate as a waiver of it. No waiver by a party shall be construed as a waiver of any subsequent or different right, power or privilege.

#### **24. THIRD PARTIES:**

Unless expressly stated otherwise, the Purchase Order shall not, and shall not purport to, confer on any third party any right to enforce any term of the Purchase Order for the purposes of the Contracts (Rights of Third Parties) Act 1999.

#### **25. GOVERNING LAW:**

The Purchase Order shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English Courts.