

# Morrison Utility Services Limited - Standard Purchase Terms

## 1. Definitions

In these terms and conditions -

"the Company" means Morrison Utility Services Limited, a company registered in England and Wales under number 04530602 whose registered office is at Morrison House, Primett Road, Stevenage, Hertfordshire, SG1 3EE;

"the Company's Environmental Policy" means the Company's environmental policy from time to time, insofar as it is relevant to the subject matter of the Contract;

"the Contract" means the agreement to which these terms and conditions apply, as defined in paragraph 2 and which shall be subject to English law;

"the Goods" means the items (if any) specified on the Purchase Order which are the subject of the Contract;

"the Purchase Order" means the order on the Company's standard printed form or in any standard electronic form which the Company may use from time to time to which these terms and conditions apply;

"the Services" means the job or tasks or other services (if any) specified on the Purchase Order which are the subject of the Contract;

"the Supplier" means the person with whom the Contract is made.

## 2. Terms of Contract

(i) The Contract shall comprise these terms and conditions and the Purchase Order and any specific terms, conditions and specifications set out in the Purchase Order or which are otherwise expressly agreed in writing in any other contractual documentation signed by duly authorised representatives of the Company and the Supplier. In the event of any conflict between such specific terms, conditions and specifications and these terms and conditions, the former shall prevail.

(ii) These terms and conditions and the Purchase Order supersede any oral discussions or negotiations concerning the terms applying to the supply of the Goods or the provision of the Services, but shall not supersede any representations made by or for the Supplier in respect of the Goods or the Services.

(iii) Where the Goods are required for contract works under a building contract and the Supplier is nominated pursuant to the main building contract then Clause 36 of the current JCT standard form building contract or Clause 59 of the current ICE conditions of contract as appropriate shall be deemed included in the Contract. Where the Supplier is not nominated then Clause 36 of the current JCT standard form building contract shall be deemed included in the Contract. In all cases the equivalent clause in any later editions will apply.

## 3. Delivery of the Goods

On despatch, an advice note must be sent to the Company giving such details as will enable the Company to check the delivery. All the Goods must be adequately packaged and protected against damage and deterioration in transit and delivered carriage paid on the date and at the delivery address specified in the Contract.

## 4. Details of the Services

Prior to the date(s) for performance of the Services the Company (acting reasonably) may alter any date(s), quantities, places for performance and details of the Services upon giving the Supplier reasonable notice in writing of any such alteration, but so that the Supplier shall give the Company notice in writing within five working days if any such alteration affects the price agreed for the Services, and in the absence of any such notice from the Supplier, no change shall be made to the price originally agreed.

## 5. Time of Delivery or Performance

Any time or period for delivery or despatch of the Goods or performance or completion of the Services shall be of the essence. If the Supplier fails to deliver despatch or complete the same in accordance with the Contract or fails to make progress with any order so as to jeopardise the purpose of the order, the Company may terminate the Contract or any part of it forthwith on giving written notice and reserves all rights in damages and otherwise arising including all losses and expenses suffered whether direct or indirect.

## 6. Property and Risk

Property and risk in the Goods shall pass to the Company at the time of actual delivery, without prejudice to the Company's statutory or contractual rights.

## 7. Quality and Description

All the Goods and the Services supplied shall -

(i) conform as to quality and description with the particulars stated in the Contract and correspond in the case of the Goods to any sample pattern or specification specified in the Contract and in the case of the Services to any specification or standard of performance specified in the Contract;

(ii) where covered by a British or European equivalent standard specification, comply with the appropriate specification, unless otherwise agreed in writing;

(iii) in the case of the Goods be of sound materials and workmanship;

(iv) in the case of the Goods be fit for the purpose for which they are supplied under the Contract or, where such purpose is known to the Supplier, for which they are required by the Company;

(v) in the case of the Goods be new or be provided using new materials, unless otherwise agreed in writing;

(vi) in the case of the Services be supplied with all reasonable care and skill and so as to achieve a high standard of performance, when measured against the standards generally expected within the relevant industry or professional service sector; and

(vii) be supplied in accordance with the Company's Environmental Policy.

## 8. Warranty

Without prejudice to any other rights or remedies which the Company may have against the Supplier, the latter shall expeditiously repair or replace any of the Goods which are or become defective during the period of twelve months, or extended agreed period, from putting into service, where such defects occur under proper usage and are due to faulty design, materials or workmanship, or erroneous or inadequate instructions as to use, or any other breach of the Supplier's obligations, whether express or implied. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of twelve months, or extended agreed period, from the date of reinstallation. The Supplier shall further be liable for any extra costs and expenses incurred by the Company by reason of the supply of the defective Goods, including (without limitation) all costs associated with the identification, removal and reinstallation of the defective Goods and the loss of beneficial use of any facility or installation of which they form part.

## 9. Statutory Obligations

The Supplier shall comply with all relevant legislation, rules, regulations, bye laws, codes of practice and directives affecting the performance of the Contract.

## 10. Intellectual Property Rights

(i) The Supplier shall indemnify the Company in full against any claim for infringement of any intellectual property right brought in respect of the use of any of the Goods or materials supplied by the Supplier to the Company and against all costs expenses and damages which the Company may incur or become liable for in any such action.

(ii) If the Contract involves product development or commissioning or the performance of professional or design or other services involving the creation of any intellectual property right, the ownership of any invention, patent, design, copyright, database right and any other intellectual property right arising out of such work shall vest in the Company and the Supplier shall co-operate, and shall procure that its staff co-operate, in any measures necessary to effect any transfer of ownership as soon as such rights arise.

## 11. Price

(i) All prices quoted for the Goods or the Services include the cost of all necessary works and processes required to ensure that the Goods or the Services comply with the terms of the Contract.

(ii) All prices quoted shall be for the Goods delivered carriage and duty paid (and customs cleared where applicable) to the delivery address specified in the Purchase Order.

(iii) The prices quoted shall be net of Value Added Tax.

## 12. Payment

(i) Subject to meeting all the terms and conditions of the Contract, payment for invoices received before the 7th day of a calendar month will be due on the last day of that calendar month, and payment for invoices received on or after the 7th day of a calendar month will be due on the last day of the following calendar month.

(ii) The Supplier shall submit an invoice for the Goods or the Services upon delivery of the Goods at the delivery address or upon proper completion of the Services. Where the Services are periodic, the Supplier shall submit an invoice for the Services on a monthly basis.

(iii) Interest shall be payable on unpaid invoices from the due date for payment until actual payment at the rate of 4% per annum above Barclays Bank base rate from time to time.

## 13. Set Off

The Company shall be entitled to set off against any invoice any amount due to it from the Supplier under the Contract or under any other contract or arrangement.

## 14. Indemnity

The Supplier shall at its own expense keep the Company fully indemnified against any loss, damage, cost, expense or other liability caused or contributed to by any error act or omission of the Supplier and/or any employee contractor or agent of the Supplier, except to the extent that such loss damage cost expense or liability is caused by the negligent act or omission of the Company.

## 15. Sub-Contracting and Assignment and Third Parties

(i) Except for sub-contracts for materials or in relation to minor details, none of the work covered by the Contract shall be assigned or sub-contracted by the Supplier without the written consent of the Company, which shall not be unreasonably withheld. The Supplier remains liable for the performance of the Contract.

(ii) The Company may at any time, without the Supplier's consent, assign or transfer any or all of its rights and/or obligations under the Contract to any other company or person upon giving written notice to the Supplier. The Supplier shall at the request of the Company execute any assignment or novation or other agreement or document to give effect to any such assignment or transfer.

(iii) The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract and are hereby expressly excluded.

## 16. Publicity and Confidentiality and Data Protection

(i) The Supplier shall not use the Company's name for advertisements or publicity purposes without written consent.

(ii) The Supplier shall treat all information data and materials provided by the Company or obtained by the Supplier in connection with the Contract as confidential and shall use the same only for the purposes of performing the Contract, but this shall not apply to information already in the public domain or which falls into the public domain through no fault of the Supplier, or to information which was already lawfully in the Supplier's possession and free of any confidentiality obligation before being disclosed to it by the Company, or to information which is required to be disclosed by law. The Supplier shall take appropriate measures to ensure the security of all the Company's documents and data and materials in its possession and shall return or deliver the same (and all copies) to the Company if so requested on completion of the Contract.

(iii) Where the Contract involves the disclosure by the Company to the Supplier of any personal data (as defined in the Data Protection Act 1998) the Supplier shall comply with all requirements of that Act in relation to its processing of any such data and in particular shall process it only in accordance with the Company's instructions and shall ensure that appropriate technical and organisational measures are taken against unauthorised or unlawful processing of, or accidental loss or destruction of, or damage to, such data.

## 17. Waiver and Forbearance

The rights of the Company under the Contract shall not be prejudiced or restricted by any indulgence or forbearance extended by the Company to the Supplier and no waiver by the Company of any of its rights in relation to any breach of the Contract shall affect its rights in respect of any subsequent breach.

## 18. Termination

(i) The Company shall be entitled to terminate the Contract forthwith by notice in writing if -

(a) the Supplier commits any breach of any provision of the Contract (other than a breach of paragraph 5 of these terms and conditions) and, in the case of a breach capable of remedy, fails to remedy the same within ten working days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; a breach shall be considered to be capable of remedy if the Supplier can comply with the provision in question in all respects other than as to time of performance;

(b) the Supplier becomes insolvent or any receiver or administrator or administrative receiver is appointed in respect of the Supplier or any of its assets;

(c) the Supplier makes any voluntary arrangement with its creditors or becomes subject to an administration order; or

(d) the Supplier goes into liquidation (except for the purpose of a bona fide amalgamation or reconstruction).

(ii) Any right of the Company to terminate the Contract shall be without prejudice to any other of its rights or remedies in respect of the breach concerned (if any) or any other breach.

(iii) Notwithstanding any other provision of the Contract, the Company shall have the right, exercisable at any time and for any reason whatsoever, to terminate the Contract on giving not less than one month's written notice to the Supplier. On giving such notice, the Company shall also be entitled to cancel any outstanding orders under the Contract, unless the Goods which are the subject of the order have been specifically designed or adapted by the Supplier for the Company's purposes.

## 19. Force Majeure

Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances beyond its reasonable control. The following shall not be considered as being beyond the reasonable control of the Supplier: lack of funds; strikes or any other industrial action solely by the employees of the Supplier or any of its group companies or any of their respective agents or contractors, IT failures or loss of data or computer virus problems where the Supplier has not implemented all reasonable IT security measures against such events.

## 20. Notices

All notices shall be deemed properly served if sent by recorded delivery post to the address for the party to be served stated in the Contract or any subsequent address from time to time notified to the other party.

Revised RS 131004