

RICHARD IRVIN FM LIMITED – PURCHASE ORDER TERMS AND CONDITIONS

1 INTERPRETATION

- 1.1 In these Conditions:
"Company" means Richard Irvin FM Limited, incorporated in England (registered number 11454668), and whose registered office is at 6th Floor, 24 Old Bond Street, London W1S 4AW and its subsidiary or associated companies. "Conditions" means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Seller. "Contract" means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services;
"Delivery Address" means the delivery address stated on the Order;
"Goods" means the goods (including any instalment of the goods or any part of them) described in the Order;
"Order" means the Company's purchase order of which shall include these Conditions;
"Price" means the price of the Goods and/or the charge for the Services;
"Seller" means the person, firm or company so described in the Order;
"Services" means the services (if any) described in the Order;
"Specification" includes any plans, drawings, data or other information relating to the Goods or Services.
1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 BASIS OF PURCHASE

- 2.1 The Order constitutes an offer by the Company to purchase the Goods and/or acquire the Services subject to these Conditions.
2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Company or subject to which the Order is accepted or purported to be accepted by the Seller.
2.3 The Order will be deemed to have been accepted by the Seller seven days after its date unless the Seller advises the Company otherwise in writing prior to that date. Delivery by the Seller shall of itself constitute an acceptance of the Order.
2.4 No variation to the Order or these Conditions shall be binding unless agreed in writing between the authorised representatives of the Company and the Seller.

3 SPECIFICATION

- 3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Company to the Seller or agreed in writing by the Company.
3.2 Any Specification supplied by the Company to the Seller, or specifically produced by the Seller for the Company, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Company. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.
3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.
3.4 The Seller shall not unreasonably refuse any request by the Company to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Company with all facilities reasonably required for inspection and testing.
3.5 If as a result of inspection or testing the Company is not satisfied that the Goods will comply in all respects with the Contract, and the Company so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.
3.6 The Goods shall be marked in accordance with the Company's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
3.7 The Company shall be informed of all proposed changes in the specification or method of construction of Goods supplied before such changes are implemented. If the Company accepts the change, written approval will be sent to the Seller. The Company shall be entitled to cancel the Order in respect of all or part only of the Goods (including any Goods not so affected by such changes) by giving written notice to the Seller within 14 days of being so informed by the Seller. Component parts, or identical replacements, of any Goods supplied under the Contract shall be available to the Company for a period of at least 5 years from the date of the Order, or that prior to these Goods and/or parts being made obsolete, at least 9 months' notice will be given to the Company in writing.
3.8 The Seller will ensure that Goods will comply with the requirements of the law and, to the extent that they contain toxic, corrosive or hazardous materials, the Seller will ensure that a notice to that effect will accompany each consignment, together with appropriate care and handling instructions.
3.9 Any Goods supplied under the Contract which are contaminated beyond use at the time of delivery shall be regenerated or disposed of by the Seller. Title and risk in the contaminated goods will transfer to the Seller at the time the contamination is identified and notified to the Seller, who will bear all expenses for the said processes, including the costs of returning such Goods to the Seller.

4 PRICE OF THE GOODS AND SERVICES

- 4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:
4.1.1 exclusive of any applicable value added tax (which shall be payable by the Company subject to receipt of a VAT invoice); and
4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.
4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Company in writing.
4.3 The Company shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller.

5 TERMS OF PAYMENT

- 5.1 The Seller shall be entitled to invoice the Company on or at any time after delivery of the Goods or performance of the Services, as the case may be.
5.2 Each invoice shall quote the Order number, title and such other details as may be specified in the Order. Failure to do so may result in a delay in payment of the invoice. Each invoice shall be forwarded to the address specified in the Order.
5.3 Terms of payment are strictly 30 days.
5.4 If a dispute arises in respect of the whole or any portion of an invoice, the Company shall inform the Seller of the disputed portion and the Seller shall, without delay, issue a credit note to the Company for the amount in dispute. The undisputed portion of such invoices shall not be paid until such credit note has been received by the Company. The issue of the credit note is without prejudice to the Seller's right to receive payment of the disputed portion or part thereof upon settlement of the dispute.
5.5 The Company shall be entitled to set off against the Price any sums owed to the Company by the Seller.

6 DELIVERY

- 6.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Company's usual business hours.
6.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of Order, the Seller shall give the Company reasonable notice of the specified date.
6.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract, provided that the Seller shall not be liable for damages resulting from delays caused by circumstances outside its control, subject to the Seller having notified the Company promptly (and in any event no later than 48 hours) after becoming aware of such circumstances. In such cases where it is apparent that the delay may be prolonged, the Company shall have the option to terminate the Contract forthwith upon written notice without liability.
6.4 A delivery note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
6.5 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
6.6 The Company shall be entitled to reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted any Goods until the Company has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
6.7 The Seller shall supply the Company in good time with any instructions (including any applicable operating and maintenance procedures) or other information required to enable the Company to accept delivery of the Goods and performance of the Services.
6.8 Unless otherwise agreed in writing, the Company shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Company.
6.9 Goods delivered in error or in excess of the quantity required may at the Company's option be returned to the Seller at the Seller's expense.
6.10 If the Goods are not delivered or the Services are not performed on the due date then, without prejudice to any other remedy, the Company shall be entitled to deduct from the Price or (if the Company has paid the Price) to claim from the Seller by way of liquidated damage for delay 2 per cent of the Price for every week's delay, up to a maximum of 10 per cent.

7 INSPECTION

- 7.1 The Seller shall ensure that all inspection and tests, including inspection of sub-contracts, shall be carried out as necessary and as required by the Specification. Before despatching the Goods, the Seller shall carefully inspect and test for compliance with the requirements of the Contract.
7.2 The Seller shall inform the Company in writing 7 working days in advance of the final tests and/or inspection or any other tests that may be specified and permit at its premises or the premises of any sub-contractor, such progress and inspection surveillance as the Company considers necessary. The Seller shall provide safe and proper facilities for such access.
7.3 Any inspection, or failure to inspect, by the Company shall in no way release the Seller of any responsibility or liability under the Contract nor be interpreted in any way so as to imply acceptance thereof by the Company.
7.4 Any additional work to be performed or action to be taken by the Seller resulting from any inspection or rejection of the Goods and/or Services shall not be regarded as a modification and shall be carried out at the Seller's own expense.

8 RISK AND PROPERTY

- 8.1 Risk of damage to or loss of the Goods shall pass to the Company upon delivery to the Company in accordance with the Contract.
8.2 The property in the Goods shall pass to the Company upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Company once payment has been made and the Goods have been appropriated to the Contract.

9 WARRANTIES AND LIABILITY

- 9.1 The Seller warrants to the Company that the Goods:
9.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
9.1.2 will be free from defects in design, material and workmanship;
9.1.3 will correspond with any relevant Specification or sample;
9.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods; and
9.1.5 comply with all current industry or other standards specified in the Order.
9.2 The Seller warrants to the Company that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Company to expect in all the circumstances.
9.3 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Company shall be entitled:
9.3.1 to require the Seller to repair the Goods or rectify the Services or to supply replacement Goods or Services in accordance with the Contract within seven days; or
9.3.2 at the Company's sole option, and whether or not the Company has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
9.4 The Seller shall indemnify the Company in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of or in connection with:
9.4.1 breach of any warranty (whether in the Conditions or otherwise) given by the Seller in relation to the Goods or the Services
9.4.2 any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other industrial or intellectual property rights of any other person, except to the extent that the claim arises from the use of any drawing, design or compliance with any Specification supplied by the Company;
9.4.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
9.4.4 any act or omission of any of the Seller's employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
9.4.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.
9.5 Neither the Seller nor the Company shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure beyond to that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:
9.5.1 Act of God, explosion, flood, tempest, fire or accident;
9.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
9.5.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
9.5.4 Import or export regulations or embargoes;
9.5.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of either the Seller or the Company or of a third party).

10 INSURANCE

- 10.1 Without limitation of its liabilities and responsibilities under the Contract, the Seller shall at its own cost obtain and maintain in full force and effect throughout the duration of the Contract all insurances required by applicable legislation (in so far as applicable to the Goods or Services) in respect of public, employers' and motor vehicle liability, comprehensive general liability, products liability and professional indemnity in amounts, coverage and with companies satisfactory to the Company but in any event, such amounts and coverage shall not be less than commonly held standards in the appropriate industry, and upon request shall, within 14 days of the renewal date(s) thereof, provide the Company with evidence thereof.

11 TERMINATION

- 11.1 The Company shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller:
11.1.1 at any time prior to delivery or performance; or
11.1.2 in terms of Condition 3.7; in which event the Company's sole liability shall be to pay to the Seller the Price for the Goods or Services in respect of which the Company has exercised its right of cancellation, less the Seller's net saving of cost arising from cancellation.
11.2 The Company shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:
11.2.1 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
11.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
11.2.3 the Seller ceases, or threatens to cease, to carry on business; or
11.2.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

12 ASSIGNATION

- 12.1 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

13 CONFIDENTIALITY

- 13.1 The Contract and any Order placed by the Company shall be treated as confidential and the Seller shall take all steps necessary to avoid the disclosure to third parties of any information contained therein or any information communicated to the Seller on a confidential basis by the Company. This obligation will terminate only when such information has fallen legitimately into the public domain.
13.2 All designs, drawings, specifications and information which may be supplied in connection with the Order are confidential and shall be used only for the purposes of the Order.
13.3 Title and copyright in all designs and drawings of the Goods or in connection with the Services or any part thereof and in all specifications and information relating thereto provided to the Seller by the Company or prepared or made by the Seller, its employees, agents or sub-contractors for the express purpose of fulfilling the Contract shall vest in and belong to the Company absolutely.
13.4 The Seller shall forthwith upon request at any time and without charge deliver to the Company all designs, drawings, specifications and information relating to the Goods or Services then in the possession of the Seller or in the possession of any other person, firm or company who has possession of such documentation, through under or by direction of the Seller.

14 ANTI-CORRUPTION

- 14.1 The Seller must comply with the Company's Anti-Corruption Code at all times when dealing with the Company and its employees. The Company's Anti-Corruption Code can be viewed under "Policies" on the Company's website (www.richard-irvin.com).
14.2 The Company will select Sellers, based on anticipated annual spend, to enter into an Anti-Corruption Agreement with the Company in order that the Seller can remain on the Company's approved vendor database.

15 GENERAL

- 15.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
15.2 No waiver by the Company of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
15.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
15.4 Any dispute arising under or in connection with the Contract shall be referred in the first instance to the respective managing directors of the Company and the Seller who shall discuss the matter and make all reasonable efforts to reach an agreement. If no such agreement is reached the dispute shall be referred to such independent person nominated by agreement of the parties, who shall act as an expert, not an arbitrator, and whose costs shall be borne as such expert may direct. In the absence of any agreement being reached on a particular dispute either party may take appropriate action in the courts to resolve the breach at any time.