

The Vendor's acknowledgement of the Purchase Order shall constitute acceptance of these conditions and shall create the Contract between the Vendor and the Customer, save as varied by any pre-existing terms and conditions agreed between the Customer and the Vendor.

1. Definitions

1.1. In these conditions:

"Contract" means the agreement between the Customer and Vendor comprising the Vendor's quotation and the Customer's acceptance thereof, including the Purchase Order, and any documents referred to therein.

"Customer" means Toureen Group Ltd of 25 Cecil Road, Wealdstone, Middx HA3 5QY also trading as Toureen Contractors Ltd, Toureen Plant Ltd, Boshers Master Builders Ltd and Toureen Retail.

"Days" means calendar days save where the context otherwise requires.

"Data Protection Legislation" means the GDPR, the Data Protection Act 2018 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

"FOIA" means the Freedom of Information Act 2000.

"Goods" means anything supplied or to be supplied to the Customer under the Contract.

"GDPR" means the General Data Protection Regulation (EU 2016/679).

"Purchase Order" means the document relating to the order for Goods to be supplied by the Vendor to the Customer in accordance with the Contract.

"Vendor" means the supplier of any Goods under the Contract.

1.2. In these conditions, unless the context otherwise requires:

1.2.1. Headings are included for convenience only and shall not affect the interpretation of these conditions;

1.2.2. The singular includes the plural and vice versa;

1.2.3. A gender includes any other gender;

1.2.4. A reference to a 'person' includes any individual, firm, partnership, company and any other body corporate; and

1.2.5. A reference to a statute, statutory instrument or other subordinate legislation is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom.

2. Conditions for the supply of Goods - Vendor's duties

2.1. The Vendor shall supply the Goods to the Customer as described in the Customer's Purchase Order.

2.2. The Vendor shall ensure that the Goods shall:

2.2.1. be free from defects in materials and workmanship and remain so for 12 months after delivery;

2.2.2. be of satisfactory quality (within the meaning of the Sales of Goods Act 1979) and fit for any purpose held out by the Vendor or made known to the Vendor by the Customer, expressly or by implication, and in this respect the Customer relies on the Vendor's skill and judgment;

2.2.3. conform with the specifications, drawings, and descriptions given in any material (in whatever format made available by the Vendor) supplied by, or on behalf of, the Vendor;

2.2.4. be free from design defects;

2.2.5. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

2.3. The Vendor shall ensure that:

2.3.1. the Goods, so described in the Customer's Purchase Order, are not substituted without the consent of the Customer;

2.3.2. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

2.3.3. each delivery of the Goods is accompanied by a delivery note correctly addressed to the Customer which shows the Purchase Order number, order and dispatch dates, the type and quantity of the Goods, return instructions and, in the case of part delivery, the outstanding balance remaining to be delivered;

2.3.4. if the Vendor requires the Customer to return any packaging material for the Goods to the Vendor, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Vendor at the cost of the Vendor.

2.4. The Vendor shall deliver the Goods:

2.4.1. on the date specified in the Purchase Order or, if no such date is specified, then within 7 days of the date of the Purchase Order;

2.4.2. to the address specified in the Purchase Order or as instructed by the Customer before delivery;

2.4.3. between 8:00am and 5:00pm Monday to Friday, or as instructed by the Customer;

2.4.4. in strict accordance with any special delivery instructions made known to the Vendor at the time of acceptance of the Vendor's quotation by the Customer or as may be instructed by the Customer from time to time.

2.5. Where the Vendor fails to deliver the Goods (or part of the Goods), or the Goods (or part of the Goods) do not comply with the provisions of clause 2.2, then without limiting its other rights or remedies implied by statute or common law, the Customer shall be entitled:

2.5.1. to terminate the Contract;

2.5.2. request the Vendor, free of charge, to deliver substitute Goods within the timescales specified by the Customer;

2.5.3. to require the Vendor, free of charge to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if payment has been made);

2.5.4. to reject the Goods (in whole or part) and return them to the Vendor at the Vendor's own risk and expense and the Customer shall be entitled to a full refund on those Goods or part of Goods duly returned;

2.5.5. to buy the same or similar Goods from another vendor and to recover any expense incurred in respect of buying the Goods from another vendor which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

3. Charges and payment

3.1. The charges for the Goods shall be as set out in the Purchase Order and shall be the full and exclusive remuneration of the Vendor in respect of the supply of the Goods. Unless otherwise agreed in writing by the Customer, the charges for the Goods shall include every cost and expense of the Vendor directly or indirectly incurred in connection with the supply of the Goods. For the avoidance of doubt, this shall include but not be limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.

3.2. The Vendor shall submit an invoice within 28 days of supplying the Goods to the satisfaction of the Customer. The invoice shall be on letterhead paper correctly addressed to the Customer and include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number, a breakdown of the Goods supplied and the amount of VAT payable. Save where an invoice is disputed, the Customer shall pay the Vendor in accordance with the agreed payment terms, or 60 days if no alternative payment terms have been agreed. Invoices must be sent to: Invoices@toureen.co.uk.

3.3. Whenever under the Contract any sum or sums of money shall be recoverable from or payable by the Vendor to the Customer, that amount may be deducted from any sum then due, or which at any later time may become due, to the Vendor under the Contract or under any other contract with the Customer.

4. Liability

4.1. Neither party excludes or limits, under applicable law, its liability for:

4.1.1. death or personal injury caused by its negligence;

4.1.2. fraud or fraudulent misrepresentation; or

4.1.3. any other liability that cannot be excluded or limited

4.2. Subject to clause 4.1, the Supplier's total liability arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the total fees paid by the Customer to the Supplier under this Agreement in the 12 months immediately preceding the event giving rise to the claim.

5. Sub-Contracting and Assignment

5.1. The Vendor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the Customer. Where the Vendor enters into a contract with a supplier or sub-vendor for the purpose of performing the Contract or any part of it, he shall cause a term to be included in such contract which requires payment to be made by the Vendor to the supplier or sub-vendor within a period not exceeding 30 days from receipt of a valid invoice as defined by the contract requirements.

6. Variations to the Contract

6.1. The Contract may only be varied if it is in writing and signed by a Director both for the Vendor and the Customer.

7. Notices

7.1. A notice may be served:

7.1.1. by delivery to the Vendor if sent by email; or

7.1.2. by ordinary first-class post to the Vendor's last known place of business or registered office.

7.2. A notice shall be deemed served at the time of delivery, at the time of receipt for an email, or on the second working day after posting.

8. Loss or damage

8.1. The Vendor shall, without delay and at the Vendor's own expense, reinstate, replace or make good to the satisfaction of the Customer, or if the Customer agrees, compensate the Customer for any loss or damage connected with the performance of the Contract, except to the extent that such loss or damage is caused by the neglect or default of the Customer.

8.2. "Loss or damage" includes but is not limited to loss or damage to property; personal injury, sickness or death; and loss of profits or loss of use suffered as a result of any loss or damage.

8.3. This clause shall survive termination or expiry of the Contract.

9. Insurance

9.1. The Vendor shall affect and maintain an adequate level of insurance cover in respect of all risks that may be incurred by him in the performance of this Contract.

9.2. The Goods remain at the Vendor's risk until payment has been made to the Vendor by the Customer.

10. Prevention of Fraud and Corruption

10.1. The Vendor shall not receive or agree to receive from any person, or offer or agree to give to, or procure on behalf of any person in the employment of the Customer, any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in connection with the Contract.

11. Discrimination

11.1. The Vendor shall perform its obligations under the Contract in accordance with all applicable equality law and the Customer's equality and diversity policy as provided to the Vendor from time to time.

12. Disclosure of Information

12.1. The Vendor shall not disclose any confidential information received from the Customer, shall safeguard it accordingly and shall not disclose it to any other person or company without the prior written permission of the Customer, unless such disclosure is required by law, any governmental or regulatory authority or by a court of competent jurisdiction.

(Terms continue overleaf)

12.2. The Vendor shall only disclose such confidential information to those of its employees, agents and sub-vendors who need to know it for the purpose of discharging the Vendor's obligations under the Contract, and shall ensure that such employees, agents and sub-vendors comply with the obligations set out in this clause as though they were a party to the contract.

12.3. The Vendor shall not disclose any other information, which is not confidential information, relating to the Contract or the Customer's activities without the prior written consent of the Customer, unless such information is already in the public domain.

12.4. This clause shall survive termination or expiry of the Contract.

13. Data handling

13.1. The Vendor shall comply with any notification requirements under the Data Protection Legislation and shall duly observe all their obligations under the Data Protection Legislation which arise in connection with the Contract.

13.2. When handling the Customer's data (whether or not personal data), the Vendor shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Vendor from time to time.

13.3. Notwithstanding the general obligation in sub-clause 6.1, where the Vendor is processing personal data for the Customer as a data processor (as defined by the GDPR) the Vendor shall:

13.3.1. ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data);

13.3.2. provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Vendor is complying with its obligations under the Data Protection Legislation;

13.3.3. promptly notify the Customer of any breach of the security requirements of the Customer;

13.3.4. promptly notify the Customer of any request for access to or request to rectify or erase personal data; and

13.3.5. ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the Data Protection Legislation;

13.3.6. ensure that its staff are suitably trained;

13.3.7. ensure that personal data is not transferred outside the United Kingdom without the Customer's prior written consent.

14. Intellectual Property Rights

14.1. In respect of any Goods that are transferred to the Customer as part of the Services under this Contract, the Vendor warrants that it has full, clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.

14.2. Subject to any prior rights of the Customer, and to the rights of third parties arising otherwise than under the Contract, such intellectual property rights as are derived from or arise because of the performance of the Contract by the Vendor, shall vest in the Vendor. The Vendor hereby grants the Customer a perpetual, royalty-free, irrevocable, non-exclusive license to use all intellectual property rights in the materials created or developed pursuant to the Contract.

14.3. The Vendor shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses suffered incurred by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Vendor, its employees, agents or sub-vendors.

14.4. This clause shall survive termination or expiry of the Contract.

15. Termination

15.1. Without limiting its other rights or remedies, the Customer may terminate the Contract:

15.1.1. in whole or in part at any time before delivery with immediate effect by giving written notice to the Vendor, whereupon the Vendor shall discontinue all work on the Contract. The Customer shall pay the Vendor reasonable costs necessarily and properly incurred by him but excluding loss of profit and consequential losses, provided that the amount shall not exceed the total cost of the Contract.

15.2. Without prejudice to any other right or remedy it might have, the Customer may terminate the Contract by written notice to the Vendor with immediate effect if the Vendor:

15.2.1. (without prejudice to clause 10.2.3), is in material breach of any obligation under the Contract which is not capable of remedy;

15.2.2. repeatedly breaches any of the terms and conditions of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;

15.2.3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Vendor receiving notice specifying the breach and requiring it to be remedied;

15.2.4. breaches any of the provisions of clauses 5, 6, 7, 8, 9, and 17; or

15.2.5. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Vendor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Vendor's assets or business, or if the Vendor makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.

15.3. Termination or expiry of the Contract shall not affect the rights of the parties to the Contract that may have accrued prior to termination or expiry and shall not affect clauses which expressly or by implication survive termination or expiry of the Contract.

15.4. Upon termination or expiry of the Contract, the Vendor shall:

15.4.1. give all reasonable assistance to the Customer and any incoming supplier/sub-vendor of the Goods; and

15.4.2. return all requested documents, information and data to the Customer as soon as reasonably practicable.

16. Settlement of Disputes

16.1 With a view to avoiding and early resolution of disputes or differences, each party shall promptly notify the other in writing of any matter that appears likely to give rise to a dispute or difference.

17. Governing Law and Jurisdiction

17.1. The Contract shall be governed by and interpreted in accordance with English Law. The courts of England and Wales shall have exclusive jurisdiction to settle any claim arising out of or in connection with this Contract.

18. General

18.1. A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the parties.

18.2. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Contract shall be valid only if it is communicated to the other party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

18.3. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

18.4. If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

Toureen Group 
Solving complex challenges since 1992

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