

EC HARRIS GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES (v5: NOVEMBER 2011)

1 FORMATION OF CONTRACT

- 1.1 These Terms will apply to all Purchase Orders issued by EC Harris (unless EC Harris and the Supplier agree otherwise in writing) and shall be deemed to be accepted by the Supplier on the earlier of:
- 1.1.1 the Supplier returning a written acceptance of a Purchase Order; or
- 1.1.2 the Supplier despatching Goods or performing Services following the issue of a Purchase Order by EC Harris.
- 1.2 The Purchase Order along with these Terms constitutes the whole agreement between the parties in relation to the Purchase Order. Neither party has relied on, and shall have no right or remedy in relation to any statement or representation (whether made negligently or innocently) other than expressly set out in these Terms.
- 1.3 Any subsequent variation to the provisions of the Purchase Order or these Terms shall only be binding when agreed in writing and signed by the parties.

2 DELIVERY AND SERVICES

- 2.1 Goods shall be delivered and/or the Services performed on the Delivery Date at the Delivery Site and in accordance with any instructions stated in the Purchase Order during Normal Business Hours (unless agreed otherwise).
- 2.2 Where Goods are being delivered under a Purchase Order, time will be of the essence.
- 2.3 If the Supplier fails to deliver any Goods to the Delivery Site (or Services on the Delivery Date), then the Supplier shall pay to EC Harris the Liquidated Damages set out in a Purchase Order (or otherwise agreed in writing) for each day between the Delivery Date and the actual date of delivery except where any failure or delay is attributable to EC Harris.
- 2.4 If EC Harris is unable to accept delivery of the Goods until after the Due Date for Delivery, the Supplier will store the Goods safely until an alternative delivery date is agreed, in which case EC Harris shall pay the Supplier for reasonable expenses incurred until delivery of the Goods provided such expenses are fully substantiated.

3 SPECIFICATIONS, QUALITY TESTS, REJECTION

- 3.1 The Goods and/or the Services must conform to any specifications, samples and any other requirements stated in a Purchase Order. Goods must be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and design (where the Supplier is responsible for design).
- 3.2 Where Services comprise physical works, the Supplier shall carry out such works regularly and diligently and the works shall be free from all defects including defects in design (where the Supplier is responsible for design).
- 3.3 Where Services comprise professional advice the Supplier shall perform the Services with the skill, care and diligence reasonably to be expected of a professional person experienced in the provision of services comparable in size, scope and complexity to the Services.
- 3.4 EC Harris may reject all Goods and/or Services which do not conform to paragraphs 3.1 to 3.3, in which case EC Harris may request that:
- 3.4.1 the defective Goods and/or Services are replaced or re-performed by the Supplier at their expense; or
- 3.4.2 the Supplier provides a full refund of the Price.
- 3.5 If, by the nature of the Goods and/or the Services, any defects do not become apparent until after use (despite reasonable examination and/or tests), EC Harris may reject such defective Goods and/or Services (even after a reasonable period of use).
- 3.6 Signature of any delivery note, or other documentation, presented for signature in connection with delivery of the Goods, is evidence only of the number of packages received. It is not evidence that the correct quantity or number of Goods has been delivered or that the Goods delivered are in accordance with paragraph 3.1.

- 4.7 The Supplier shall indemnify EC Harris against any costs or damages including (but not limited to) legal fees arising out of:

- 3.7.1 the acts or omissions of the Supplier, its employees or sub-contractors;
- 3.7.2 any personal injury or property damage (other than as a result of any default or neglect of EC Harris); and
- 3.7.3 Goods recall resulting from any defective Goods

4 PROPERTY AND RISK

- 4.1 Without prejudice to any right of rejection arising under these Terms property and risk in the Goods shall pass to EC Harris, when they are delivered in accordance with paragraph 3.1.

5 PRICES AND PAYMENT

- 5.1 The Price shall be that specified in the Purchase Order and shall be inclusive of all expenses and disbursements but exclusive of VAT.
- 5.2 EC Harris shall pay the Supplier within 45 days of the date of receipt of the Supplier's invoice for Goods and/or Services that are provided in accordance with these Terms. If EC Harris fails to make any payment by the due date for payment, then EC Harris shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base lending rate from time to time, provided that this paragraph shall not apply to payments that EC Harris disputes in good faith
- 5.3 Both parties shall then use their best endeavours to agree the amount of any disputed item, but failing agreement the matter shall be dealt with in accordance with paragraph 12.
- 5.4 If any sum of money is recoverable from the Supplier to EC Harris under these Terms, such sum may be deducted by EC Harris from any sum due to the Supplier.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 The copyright in all documents provided by the Supplier in connection with any Services shall belong to the Supplier. The Supplier will allow EC Harris to use such documents by granting to EC Harris an irrevocable, non-exclusive, royalty free licence to copy and use the documents for all purposes related to the Project.
- 6.2 The Supplier shall not be liable for any use of such documents for any purpose other than that for which they were prepared.
- 6.3 The Supplier warrants that neither the sale nor the use of the Goods nor the performance of the Services shall infringe any copyright or Intellectual Property Rights of any third party.
- 6.4 No Goods shall be provided by the Supplier in violation of any Intellectual Property Rights of any third parties.
- 6.5 The Supplier shall indemnify EC Harris from costs or damages resulting from any infringement of paragraph 6.3 and/or 6.4.

7 INSURANCE

- 7.1 The Supplier shall maintain the following levels of insurance cover as a minimum (unless otherwise agreed):
- 7.1.1 professional indemnity insurance for an amount of at least £2,000,000 for any one occurrence or series of occurrences arising out of any one event;
- 7.1.2 product liability and public liability insurance for an amount of at least £10,000,000; and
- 7.1.3 employer's liability insurance for an amount of at least £5,000,000, or the minimum cover required by law (whichever is the greater amount)

to cover any liability that arises in connection with a Purchase Order, and shall, on EC Harris' request produce evidence of such cover.

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8 ASSIGNMENT AND SUBCONTRACTING

8.1 The Supplier may not assign, sub-contract or transfer the whole or part of this Purchase Order to any other person without EC Harris written consent.

9 CANCELLATION AND TERMINATION

9.1 EC Harris shall be entitled to terminate a Purchase Order for convenience at any time by providing the Supplier with five days notice in writing.

9.2 Where EC Harris terminates a Purchase Order under paragraph 9.1, and in circumstances where:

9.2.1 the Purchase Order relates to the supply of Services, the Supplier shall cease to provide the Services as soon as reasonably possible (but in any event, no later than five days from the date of notice provided in accordance with paragraph 9.1) in which case EC Harris shall pay the Supplier for Services actually performed up until the time when the Supplier ceased to provide the Services; or

9.2.2 the Purchase Order relates to the supply of Goods, then upon receiving a notice of termination in accordance with paragraph 9.1, then the Supplier shall (unless agreed otherwise in writing) immediately take all measures that are possible to stop the supply of Goods and all processes associated with them in which case EC Harris shall pay the Supplier for the Goods supplied.

10 FORCE MAJEURE

10.1 Neither party shall be liable to the other for any delay or failure to perform its obligations under a Purchase Order where such delay or failure is caused by an unforeseeable or unavoidable event or circumstance that is beyond the reasonable control of that party, provided that the Supplier shall use all reasonable endeavours to mitigate the effects of such circumstances.

11 CONFIDENTIALITY

11.1 The Supplier shall not give any information provided by EC Harris in connection with a Purchase Order (which is not already in the public domain) to any third party, except where necessary to its employees or suppliers to enable the Supplier to perform the Services and its obligations under this Agreement and provided they are bound by the same obligations of confidentiality. The obligations of the Supplier under this paragraph 11.1 shall continue for 6 years after expiry or termination of a Purchase Order for whatever reason.

12 DISPUTE RESOLUTION

12.1 Both EC Harris and the Supplier shall each nominate a senior representative to act as their representative in relation to these Terms and the parties' representatives shall meet at regular intervals to discuss any issues arising.

12.2 Any disputed matter pursuant to this Agreement will be dealt with as follows:

12.2.1 In the first instance the senior representatives of each party shall meet in order to resolve the disputed matter;

12.2.2 If the meeting referred to in paragraph 12.2.1 does not resolve the disputed matter and provided the Housing Grants Construction (and Regeneration Act 1996 applies to these Terms) then either party may issue notice to the other informing them of its intention to refer that dispute to adjudication, in which event, the Scheme for Construction Contracts (England and Wales) Regulations 1998 shall also apply save for the following amendments:

(a) The adjudicator nominating body shall be the Royal Institution of Chartered Surveyors; and

(b) Any notice of adjudication to be served upon EC Harris shall be served on the Group Solicitor at EC Harris' registered office.

12.2.3 Any dispute not resolved in accordance with this paragraph 12 shall be referred to litigation in which case the provisions of paragraph 14 shall apply.

13 ANTI-BRIBERY

13.1 The Supplier shall:

13.1.1 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010; and

13.1.2 have and maintain in place throughout the duration of the Supplier's engagement with EC Harris its own policies and procedures to ensure compliance with paragraph 13.1.1 and will enforce them where appropriate.

13.2 Any breach of clause 13.1 by the Supplier shall be deemed a material breach of these Terms.

14 THIRD PARTY RIGHTS

14.1 A person who is not a party to the Contract shall not have any rights under or in connection with it under the Contracts (Rights of Third Parties) Act 1999.

15 GOVERNING LAW AND JURISDICTION

15.1 These Terms shall be governed by the law of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.

16 DEFINITIONS AND INTERPRETATION

16.1 The following words and expressions shall have the following meanings in these Terms (unless the context requires otherwise):

"**Delivery Date**" means the date stated in a Purchase Order for Delivery of Goods/Completion of Services;

"**Delivery Site**" means the address/place stated in the Purchase Order for delivery of the Goods and/or performance of the Services as set out in a Purchase Order;

"**EC Harris**" means EC Harris LLP (Company number: OC368843) (or the relevant EC Harris company as set out in a Purchase Order);

"**Goods**" means the goods as described in a Purchase Order;

"**Intellectual Property Rights**" means any patents, trade marks, trade names, designs, copyright, know-how and any other similar rights whether registered or not;

"**Liquidated Damages**" means liquidated and ascertained damages to be paid by the Supplier as set out in a Purchase Order and in accordance with the provisions of paragraph 2.3;

"**Normal Business Hours**" means 09:00 to 18:00 on Monday to Friday (inclusive);

"**Price**" means the price of the Goods as agreed between the parties and as set out in the Purchase Order;

"**Purchase Order**" means the accompanying order issued by EC Harris to the Supplier in written or electronic form which makes reference to and incorporates these Terms;

"**Services**" the services supplied or any physical works to be undertaken by the Supplier in accordance with the Terms as set out in a Purchase Order;

"**Supplier**" the supplier of Goods and Services to whom a Purchase Order has been issued, and whose company details have been set out on a Purchase Order;

"**Terms**" means these terms, conditions and warranties which apply to each Purchase Order.

16.2 References to Statutes or Statutory Instruments include references to any modification, extension or re-enactment thereof from time to time.

16.3 Any failure or delay by EC Harris in exercising any right or remedy under a Purchase Order shall not constitute a waiver of that right or remedy.