

## **Lowe & Oliver Limited Conditions of Purchase 2012**

### **Definitions**

1. In this document (“these Conditions of Purchase”) the following words / phrases have the following meanings:
  1. Vendor: the party to the Contract other than L&O;
  2. Contract: the contract between L&O and the Vendor incorporating these Conditions of Purchase;
  3. Goods: the goods of whatever nature to be supplied to L&O by the Vendor pursuant to the Contract;
  4. L&O: Lowe & Oliver Limited (and including their successors and assignees);
  5. Parties: L&O and the Vendor together.

### **Basis of the sale**

2. The Vendor sells the Goods and L&O purchase the Goods in accordance with any offer made by the Vendor and accepted by L&O or any order submitted to the Vendor by L&O and accepted by the Vendor, in either case subject to these Conditions of Purchase.
3. The Vendor has had a reasonable opportunity to inspect any contract (“the Head Contract”) between L&O and any third party in connection with which L&O is entering into the Contract and the Vendor is deemed to have full knowledge of the same (save for detailed pricing information).
4. L&O may instruct in writing any reasonable variation to the Goods (including without limitation in respect of quantity or design) and the Contract shall thereupon be varied to include the variation.
5. Any other standard terms and conditions (or similar) put forward by the Vendor are excluded from the Contract. Any other terms and conditions put forward by L&O are incorporated into the Contract but these Conditions of Purchase take precedence over them.
6. Any amendment to these Conditions of Purchase shall be effective only upon agreement in writing by L&O.
7. The Vendor represents and warrants that the Goods are fit for purpose, that they are free from defects, that they comply with any sample provided, and that they are supplied in the correct quantity.
8. Should the Vendor consider that it requires any further information of whatever nature in order to perform its obligations under the Contract, the Vendor shall in writing request that information from L&O as soon as is reasonably practicable and within 7 days of entering into the Contract.
9. Any typographical, clerical or other error may be corrected by L&O by written notification and without liability.
10. If the Vendor carries out any services additionally or alternatively to solely supplying goods, these conditions of purchase shall not apply to the Contract and L&O's Standard Terms of Sub-Contract 2012 shall instead apply to the Contract.

### **Specifications etc.**

11. The Vendor represents and warrants to L&O that the Goods are compliant with all technical details, specifications, performance requirements, drawings, measurements, and any other information of whatever nature provided by L&O (whether directly or indirectly) in connection with the ordering of the Goods and the Vendor acknowledges that L&O are entitled to rely on the same and are relying on the same.
12. The Vendor represents and warrants to L&O that the Goods are in conformance with all statutory, regulatory, customary, and good practise requirements.

### **Price of the goods**

13. The price to be paid by L&O for the Goods shall be the price set out in L&O's order, or in the Vendor's offer accepted by L&O, or as otherwise notified to the Vendor by L&O.

14. The price is fixed for the duration of the Contract and for the avoidance of doubt the price shall not fluctuate or be adjusted to reflect any increase in cost incurred by the Vendor including (without limitation) in consequence of currency fluctuations, labour and materials costs, insurance costs, or taxes or levies.
15. L&O shall be entitled to any prompt payment, bulk purchase or volume of purchase discount customarily given by the Vendor.
16. All prices are exclusive of VAT and L&O shall pay all VAT lawfully chargeable.

#### **Terms of payment**

17. Terms of payment shall be as set out in any L&O's order or in any offer made by the Vendor and accepted by L&O. If no terms of payment are there set out, the Vendor may invoice L&O for the price of the Goods upon delivery of the Goods to L&O / collection of the Goods by L&O and L&O shall pay any invoice within 60 days of receipt.
18. L&O may set off against any payment due under the Contract:
  1. Any amount due to L&O under or in connection with the Contract;
  2. Any amount due to L&O under or in connection with any other contract between L&O and the Vendor; and
  3. L&O's bona fide estimate of the foregoing.
19. If L&O fail to make any payment on time then the Vendor may charge interest at 4% above Bank of England base rate on all late sums. It is agreed that this is a substantial remedy for and deterrent to late payment.

#### **Packing and delivery**

20. Delivery of the Goods shall be as and when agreed between L&O and the Vendor. Storage costs, delivery and distribution costs, and packing costs are included in the price of the Goods.
21. If the Contract does not detail delivery arrangements, L&O may require the Vendor to deliver the Goods in whole or in part upon 72 hours' written notice.
22. The Vendor shall in any event give L&O not less than 7 days' written notice of proposed delivery, and shall observe any time or other constraints in force or existing at the place of delivery.
23. In the event that delivery is not possible at any agreed time, then alternative delivery arrangements will be agreed by the Parties and this shall not entitle the Vendor to levy any storage or redelivery charges unless the initial delivery was not possible owing to negligent conduct by L&O.
24. The Vendor is not entitled to delay any delivery if monies are due but not yet paid by L&O under the Contract or under any other contract between the Vendor and L&O.
25. The Contract is a single contract notwithstanding that the Goods may be delivered by more than one delivery.
26. L&O may dispose of packaging and packing materials as they see fit and whether or not the Goods are accepted in whole or in part.

#### **Risk in and title to property**

27. Risk of damage to or loss of the Goods shall pass to L&O upon the Goods being signed for following delivery (but not until the Goods are finally located at the site of the delivery by the Vendor) or collection. The goods must be signed for by an authorised representative of L&O and the signatory must be identifiable by printing his/her name. Signature shall not signify acceptance of the Goods or that the Goods have been inspected for quantity, quality, fitness, or otherwise.
28. L&O shall notify the Vendor in writing of damage to or items missing from the Goods as soon as is reasonably practicable following delivery or collection.
29. The Vendor shall adequately insure the Goods until the risk of damage to or loss of the Goods passes to L&O.
30. Title to the Goods passes to L&O upon delivery or collection of the Goods or when payment is requested for the Goods by the Vendor or when payment is made for the Goods by L&O,

whichever is the earlier. If L&O make payment for the Goods before taking possession of the Goods, the Vendor shall hold the Goods as L&O's fiduciary agent and as baillee, shall keep the Goods separate from the Vendor's other property, shall keep the Goods clearly identified as belonging to L&O, and shall comply with all reasonable instructions from L&O in relation to the Goods (including without limitation allowing L&O access to the Goods and to take possession of the Goods).

31. Any goods or materials issued free of charge to the Vendor by L&O remain the property of L&O and shall be used by the Vendor solely in accordance with the Contract.
32. All intellectual property rights remain vested in L&O. The Vendor shall keep confidential all intellectual property passed to it in connection with the Contract except to the extent that it is required by law or that the information enters the public domain other than by breach of confidentiality by the Vendor or any other party. Insofar as the Goods require the Vendor to use its own intellectual property, the Vendor grants L&O a non-exclusive irrevocable royalty-free worldwide sub-licensable license to use that intellectual property.

### **Liability for the Goods**

33. L&O have selected the Goods and entered into the Contract in reliance on any advertisements and representations received from the Vendor.
34. The Vendor will at L&O's election replace or repair free of charge the Goods or parts thereof which are or become faulty within 24 months from the date of delivery of the Goods. If L&O so require, the Vendor will free of charge for the purposes of investigation and/or repair attend L&O's premises or the premises at which the Goods are stored or built in. The Vendor indemnifies L&O against any costs, losses, liabilities, claims, or other exposure incurred by L&O in connection with any faults in the Goods.
35. L&O may alternatively and at their election treat faults in the Goods as discharging the Contract by the Vendor's breach and require repayment of any monies paid by L&O and removal of the Goods delivered by the Vendor.
36. The Vendor shall be liable for any delay in delivery of the Goods beyond any agreed delivery time.
37. The Vendor shall be bound by all aspects of the Head Contract which relate to the Goods and shall not do anything to cause L&O to be in breach of the Head Contract.
38. The Vendor indemnifies L&O and shall save L&O harmless from:
  1. Any breach or non-observance of or non-performance under the Contract by the Vendor;
  2. Any act, omission or default of the Vendor causing L&O to be in breach of the Head Contract;
  3. Any claim from whomever and of whatever nature in connection with the Goods;
  4. Any loss or damage resulting from any claim by any employee or agent of the Vendor in respect of personal injury (provided always that L&O do not exclude or limit their liability for personal injury or death arising from negligence by L&O);
  5. Any claim that the Goods or their design, manufacture, importation, or resale infringes any patent, copyright, design right, trademark, or other intellectual property right; and
  6. Liability under the Consumer Protection Act 1987.

### **Termination**

39. L&O may at their absolute discretion terminate the Contract or alternatively suspend the Contract if:
  1. The Vendor becomes insolvent (or L&O reasonably suspect that the Vendor is insolvent) within the meaning of section 113, the Housing Grants, Construction and Regeneration Act 1996; or
  2. The Vendor is in material breach of the Contract and, if capable of remedy, the Vendor has failed to remedy its breach of the Contract within 72 hours of written notice from L&O requiring the Vendor to remedy its breach.
40. Termination or suspension shall be by written notice from L&O to the Vendor and shall be

effective upon receipt by the Vendor. Termination or suspension shall not entitle the Vendor to damages or other compensation from L&O.

41. L&O may at any time prior to delivery of parts of the Goods cancel the requirement for those parts of the Goods and the price shall be reduced accordingly. The Vendor shall not be entitled to damages or other compensation for the cancellation.

#### **Dispute Resolution**

42. Any dispute or difference of any kind whatsoever arising under or in connection with the Contract (save for any dispute or difference in connection with VAT) shall be and is hereby referred to the arbitration of a single arbitrator. If any dispute or difference is referred to arbitration:
  1. If the Parties do not agree upon the appointment of a particular individual as the arbitrator, the President or a Vice-President of the Chartered Institute of Arbitrators shall be requested to appoint an individual to be the arbitrator;
  2. The seat of the arbitration shall be London, England; and
  3. The JCT 2011 edition of the Construction Industry Model Arbitration Rules shall apply.
43. Without prejudice to the foregoing clause 42 of these Conditions of Purchase, any dispute or difference of any kind whatsoever arising under or in connection with the Contract (save for any dispute or difference in connection with VAT) may at any time be referred to adjudication. If any dispute or difference is to be referred to adjudication:
  1. The TeCSA Adjudication Rules current at the date of the notice of adjudication shall apply; and
  2. If the Parties do not agree upon the appointment of a particular individual as the adjudicator, the President or a Vice-President of the Chartered Institute of Arbitrators shall be requested to appoint an individual to be the adjudicator (this for the avoidance of doubt taking precedence over the TeCSA Adjudication Rules adjudicator nomination provisions).

#### **Miscellaneous**

44. The Vendor shall if and whenever so requested by L&O undergo a system audit by quality assurance personnel nominated by L&O, and shall provide full co-operation and all appropriate facilities free of charge. The Vendor shall allow L&O to inspect and test the Goods whenever and however L&O require (such inspection and testing not relieving the Vendor of its obligations under the Contract or signifying L&O's acceptance of the Goods).
45. Section headings in these Conditions of Purchase are for convenience only and do not affect the interpretation of the Contract.
46. Should any part of these Conditions of Purchase be found to be illegal, unenforceable and/or otherwise invalid, that part of these Conditions of Purchase shall be severed and deleted from the remaining part of these Conditions of Purchase, and treated as if it had never been incorporated into the Contract, and the remaining parts of these Conditions of Purchase shall remain enforceable and of full force and effect.
47. The documents comprising the Contract are to be read together and as a whole. In the case of any inconsistency, contradiction or ambiguity as between the documents comprising the Contract, the inconsistency, contradiction or ambiguity shall be resolved at L&O's discretion.
48. These Conditions of Purchase do not confer, or purport to confer, any rights on any parties other than the Parties, and the Parties acknowledge that it is not their intention to confer rights on any other parties.
49. The Vendor shall not transfer or assign (or purport to do so) the Contract or the benefit of the Contract to any third party.
50. Any delay by L&O in exercising any of their rights under the Contract shall not be and shall not be treated as being any waiver of those rights by L&O, and failure by L&O to exercise any of their rights on any given occasion shall not prevent L&O from exercising those or any other rights on any future occasion.
51. Unless it is made or recorded in writing and in either case signed by a company director of

L&O:

1. No agreement to vary these Conditions of Purchase; and
2. No agreement to disapply or not to rely on any of the provisions of these Conditions of Purchase,

shall be of any effect whatsoever.

52. The Contract shall be governed by and construed in accordance with the laws of England. The parties agree, to the extent permitted under clauses 42 and 43 of these Conditions of Purchase, to submit to the exclusive jurisdiction of the English Courts.

Lowe & Oliver Limited Conditions of Purchase 2012.odt