

# Terms of purchase (2021)



## 1. Introduction

1.1 These terms accompany a purchase order. They set out the terms of an offer by us, the member of the Notting Hill Genesis group named in the purchase order, to purchase the goods and/or services described in the purchase order from you, the person to whom our purchase order is addressed.

1.2 Our offer to you will be deemed accepted when you accept it in writing, or (if earlier) when you start to fulfil the order. Once accepted, a contract on these terms will exist between us.

1.3 Unless we agree otherwise in writing signed by us, these terms apply instead of any terms provided by you, terms which we have agreed in respect of previous orders, or terms implied by any course of dealing between us.

## 2. Provision of services

2.1 Where the purchase order includes services, you shall provide those services to us, meeting any performance dates in the purchase order and any other reasonable performance dates notified to you by us. You must co-operate with us in all matters relating to the services and comply with our instructions.

2.2 The services must be performed with care, skill and diligence, to our reasonable satisfaction, and in accordance with best practice in your industry, profession or trade. The services must conform to any specification set out in, attached to, or issued by us alongside the purchase order, and to any description of the services issued by you.

2.3 You must use a sufficient number of personnel who must all be suitably skilled and experienced to perform the tasks assigned to them. You must provide all equipment, tools and vehicles necessary.

## 3. Supply of goods

3.1 Where the purchase order includes goods, you shall supply those goods to us, meeting any supply dates in the purchase order.

3.2 The goods must conform to any specification set out in, attached to, or issued by us alongside the purchase order, and to any description of the goods issued by you. They must be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 as amended) and be fit for any purpose held out by you or made known to you by us.

3.3 You shall ensure that any manufactured goods are free from defects in design, material and workmanship for 12 months after delivery (or for such other period as we may agree).

3.4 We may inspect and test the goods at any time before their delivery. However, this shall not affect your responsibility for the goods. If we identify that the goods do not comply with paragraphs 3.2 and 3.3 above, you shall take any necessary remedial action.

3.5 Goods must be properly packed and secured to ensure that they reach their destination in good condition. You shall deliver the goods on the supply date set out in the purchase order (or an earlier date agreed with us), to one of our premises as instructed by us and during our normal business hours. The goods shall be deemed delivered to us on unloading in accordance with this paragraph, at which point title and risk in the goods passes to us. But if we pay for the goods before delivery (even in part), title to the goods passes on our first payment to you.

3.6 If the goods require installation or commissioning, you shall be responsible for these activities unless the purchase order states otherwise.

## 4. Other requirements

4.1 You shall observe and comply with all applicable laws, regulations, regulatory policies, guidelines and industry codes which may apply from time to time and which relate to this purchase order.

4.2 You shall comply with the health and safety rules, IT and security requirements which apply at our premises, together with any other of our corporate policies which are made available to you. You shall maintain our premises in an orderly state at all times and remove any items brought onto our premises at the completion of the contract and make good any damage caused.

4.3 You shall comply with our other corporate policies that we identify to you, including without limitation our data protection policy, equality and diversity policy, information technology policy, intellectual property rights compliance policy and security policy, and take all reasonable steps to secure that your employees, agents and subcontractors comply with those policies.

## 5. Our remedies

5.1 If you fail to perform the services or deliver the goods by the applicable dates, we may do one or more of the following (in addition to our other legal or statutory rights):

- a) terminate the contract by giving you written notice;
- b) refuse to accept any later performance of the services or supply of the goods;
- c) require a refund of any amounts paid by us in advance for services or goods not provided; and/or
- d) recover from you our costs in obtaining substitute services or goods from a third party together with any other costs, loss or expenses suffered by us as a result of that failure.

5.2 If the goods or services do not comply with the requirements of paragraphs 2 or 3, we may do one or more of the following (in addition to our other legal or statutory rights):

- a) require you to re-supply the goods or re-provide services at your own cost so that they meet those requirements;
- b) reject the goods and services and require a refund of any amounts paid by us in advance;
- c) accept the goods and services but make a reasonable deduction from the price; and/or

d) recover from you our costs in obtaining substitute services or goods from a third party together with any other costs, loss or expenses suffered by us as a result of that failure.

## 6. Invoicing

6.1 The price for the goods and/or services shall be the price set out in the purchase order. The price is a maximum price, and if the purchase order states that you will charge by reference to a rate, the price will be the lesser of the price applying that rate and the price set out in the purchase order.

6.2 The price is exclusive of VAT, which we shall pay to you in addition to the price upon receipt of a valid VAT invoice. The price includes all other costs and expenses unless otherwise agreed between us.

6.3 You shall invoice us on completion of the services and/or delivery of the goods. Unless otherwise agreed, invoices may not exceed the amount stated on the purchase order.

6.4 We shall pay the invoiced amount within 30 days of a correctly rendered invoice to a bank account in your name stated on your invoice. If we fail to pay you within this time, interest will accrue at a rate of 4% above the base rate of the Bank of England. Interest will not apply in respect of any disputed portion of an invoice whilst we are working with you in good faith to resolve the dispute.

## 7. Intellectual property

7.1 You shall grant us (or procure a grant to us of) a fully paid-up, worldwide, royalty-free, irrevocable licence to use, copy, and modify the deliverables provided under this purchase order so that we can make full use of each deliverable.

7.2 No intellectual property belonging or licensed to us is transferred or licensed to you as part of this contract, except to the extent that we may agree in writing.

7.3 You shall not infringe the intellectual property rights of any third party and you shall comply, and require your subcontractors to comply, and in each case be able to provide evidence to demonstrate compliance with, all legislative, regulatory and any contractual requirements related to intellectual property rights and the use of any third party products or licences related to your goods or services.

## 8. Indemnity

8.1 You shall indemnify us, our officers, trustees and employees against all liabilities, costs, expenses, damages and losses suffered by us as a result of:

- a) any claim for actual or alleged infringement of a third party's intellectual property rights arising out of our receipt or use of the deliverables provided under this purchase order; and
- b) any claim of any nature brought against us by a third party arising out of the goods or services.

8.2 Unless we agree otherwise in writing signed on behalf of you and us, and subject to any such agreement:

- a) your maximum liability to us under or in connection with this contract shall be 125% of the price, but this shall not limit your liability under paragraph 8.1a) above or for matters which are (or should be) insured by you pursuant to paragraph 9 below; and
- b) our maximum liability to you under or in connection with this contract shall be the price together with any interest due pursuant to paragraph 6.4.

8.3 Neither party shall be liable to the other for consequential loss.

8.4 Nothing in this contract limits either party's liability for death or personal injury caused by that party's negligence, for fraud, for breach of any term implied by section 12 of the Sale of Goods Act 1979 or otherwise for any matter for which the limitation of liability is prohibited by law.

## 9. Insurance

9.1 During the term of the contract between us, and for two years thereafter, you shall maintain in force with a reputable insurance company professional indemnity insurance (if you are providing services), product liability insurance (if you are supplying goods), public liability insurance and employer's liability insurance to cover the liabilities that may arise under the contract. The minimum cover on a per-claim basis shall be £10,000,000 in respect of public liability insurance and £5,000,000 in respect of employer's liability insurance.

9.2 You shall provide us with your insurance certificates and most recent premium receipt upon request.

## 10. Termination

10.1 We may terminate the contract between us immediately by giving you written notice if:

- a) you undergo a change of control and we have not previously agreed to continue the contract;
- b) your financial position changes and in our opinion your capability to adequately fulfil your obligations is in jeopardy; or
- c) you fail to comply with your obligations under paragraphs 4, 11 or 12.

10.2 Either you or we may terminate the contract between us immediately by giving written notice to the other party if:

- a) the other party commits a material breach of these terms and the breach either cannot be remedied or is not remedied within 30 days of the breaching party becoming aware of the breach;
- b) the other party takes any step in connection with its entering bankruptcy, administration, provisional liquidation, making an arrangement with its creditors, being wound up, having a receiver appointed or ceasing to carry on a substantial part of its business.

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- 10.3 On termination for any reason, you shall immediately deliver to us all deliverables in your possession, whether or not then complete, and return any thing in your possession which belongs to us.
- 10.4 Termination of the contract shall not affect any of the rights, obligations or liabilities which existed up to the date of termination or the continued enforceability of any provision which by implication is intended to continue in force after termination (including without limitation paragraphs 8, 9, 11 and 15).
- 11. Data protection**
- 11.1 If you process personal data supplied by or on behalf of us as part of the provision of services under this purchase order, you acknowledge that we are the data controller and you are a data processor in respect of that personal data. You must contact us immediately if you think that you are also a data controller in respect of that data or (to the extent that you are permitted by law to do so) if the law requires you to process personal data otherwise than in accordance with this paragraph 11.
- 11.2 The purchase order or its accompanying documentation set out the scope, nature and purpose of any processing of personal data for the purpose of the contract.
- 11.3 You and we shall each comply fully with all applicable requirements of data protection legislation in force from time to time.
- 11.4 In addition, in processing personal data for the purpose of this contract, you shall:
- a) process personal data only in accordance with our written instructions (which may require you to amend, transfer, restrict processing of, or delete personal data or to provide us a copy of all personal data). If you are otherwise required by law to process the data, you must tell us about this unless you are prevented by law from doing so;
  - b) ensure that any persons who have access to or otherwise process personal data are obliged to keep that data confidential and only have such access as is strictly necessary for the performance of their duties;
  - c) take reasonable steps to ensure the reliability of such persons and that they have been adequately trained in data protection law and practice;
  - d) have in place appropriate technical and organisational measures (assessed and updated from time to time) including but not limited to any measures instructed by us pursuant to paragraph 11.4a) to protect against unauthorised or unlawful processing and against accidental loss of, or damage to, personal data;
  - e) not appoint a sub-processor to process personal data without obtaining our written consent and complying with our conditions. If you appoint a subcontractor, you will remain responsible for their compliance with data protection law;
  - f) not transfer personal data outside of the United Kingdom without obtaining our written consent and subject to appropriate safeguards being in place;
  - g) provide us with reasonable assistance and co-operation in meeting our obligations to keep personal data secure, notify breaches to the Information Commissioner, advise data subjects of breaches, carry out data protection impact assessments and consult with the Information Commissioner about such assessments;
  - h) delete or return to us any personal data on the termination of the contract (unless you are required by law to retain the data, in which case the provisions of this clause 11 shall continue until the data is destroyed or returned);
  - i) provide us with all information in your possession to demonstrate that both we and you have complied with our obligations under article 28 of the General Data Protection Regulation (as implemented into UK law under s. 3 of the European Union (Withdrawal) Act 2018 and amended from time to time);
  - j) submit and contribute to audits and inspections carried out by us or our nominated auditor to evaluate compliance with data protection legislation;
  - k) notify us immediately if you think that we have issued an instruction which does not comply with data protection legislation;
  - l) promptly (and in any event within 24 hours) notify us if you become aware or suspect that any personal data is lost, destroyed or damaged. Your notification must describe the nature of the data breach including the categories and approximate number of data subjects concerned and the categories of personal data records concerned, and you must cooperate in the resolution of the incident;
  - m) promptly (and in any event within 24 hours) refer to us any request, complaint, notice or communication from a data subject or from the Information Commissioner or other regulatory or supervisory body. You shall not (unless required by law) yourself respond to any such request but must cooperate in its resolution; and
  - n) keep written records of the processing activities you carry out on behalf of us. This shall contain the information required by article 30 of the General Data Protection Regulation (as implemented into UK law under s. 3 of the European Union (Withdrawal) Act 2018 and amended from time to time).
- 12. Anti-bribery and criminal finances**
- 12.1 You shall comply with all applicable laws, regulations and official guidance relating to anti-bribery and anti-corruption, including the Bribery Act 2010.
- 12.2 You shall not engage in any activity, practice or conduct which would constitute a tax evasion facilitation offence under sections 45 or 46 of the Criminal Finances Act 2017.
- 12.3 You shall comply with any ethics, anti-bribery or anti-corruption policy or procedure reasonably required by us and notified to you and have in place your own policies and procedures to ensure compliance of your personnel and supply chain with the Bribery Act 2010 and Criminal Finances Act 2017.
- 12.4 You shall promptly notify us of any request or demand for any undue financial or other advantage of any kind received by you in the performance of the contract between us.
- 13. Anti-slavery**
- 13.1 You shall comply with (and use all reasonable endeavours to ensure that your supply chain complies with) all applicable anti-slavery and human trafficking laws, regulations and official guidance, including the Modern Slavery Act 2015.
- 14. Force majeure**
- 14.1 Neither party shall be in breach of the contract between us or liable for any delay or failure to perform any of its obligations if such delay or failure results from an event or circumstance beyond its reasonable control.
- 14.2 The party not affected may terminate the contract if the delay or non-performance continues for more than 14 days.
- 15. Confidentiality**
- 15.1 If either party receives, as a result of the contract between us, information relating to the other which a reasonable business person would consider to be confidential, that party shall keep such information confidential and shall not without the consent of the other party:
- a) use the information except for the purpose of performing its rights and obligations under the contract; or
  - b) (except as required by law) disclose such information to any third party other than, on a confidential basis, your professional advisors or insurers.
- 16. Audit**
- 16.1 You shall allow us (and our auditors or advisors) to access your relevant records, systems, employees or agents, and those of your sub-contractors, as we may reasonably be required to do so in order to fulfil any legally enforceable request by any regulatory body or to ensure compliance with this contract or any of our corporate policies.
- 17. General**
- 17.1 Except as provided by law, you may not assign, transfer, charge, sub-contract or deal in any other way with your rights or obligations under the contract between us without our prior written consent.
- 17.2 We shall not unreasonably withhold consent to a request by you to sub-contract appropriate parts of your obligations under the contract but may impose reasonable conditions before giving such consent.
- 17.3 The contract may only be varied by written agreement between you and us.
- 17.4 Any notice to be given to a party must be sent by pre-paid first-class post or commercial courier or delivered by hand.
- 17.5 Save for the persons mentioned in paragraph 8.1 (who may enforce that paragraph), only you and we have any right to enforce the contract between us. The consent of any third party shall not be required for the variation or rescission of the contract.
- 17.6 The contract between us, and any dispute or claim under it or in connection with the services or goods shall be governed by the law of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales.
- 18. Works Services**
- 18.1 If these Terms of Purchase are used to accompany a purchase order, which relates to the Provision of Services (as per the scope and meaning provided by clause 2), or indeed a combination of the Provision of Services and the Supply of Goods (as per the scope and meaning provided by clause 3) and such Services or Goods and Services are really design and/or works to design and/or complete repairs, planned works and/or construction related activities (the "Works") then the Parties hereby acknowledge that it is their intention to automatically incorporate additional provisions within these Terms of Purchase to supplement that purchase order (a "Works PO").
- 18.2 The Parties agree that from the date on which the Works PO is issued from us to you, and dependant on the requirements and scope of the Works PO itself either clause 18.2.1 or clause 18.2.2 below shall apply and you shall be deemed to be the "Contractor" and we shall be deemed to be the "Employer" in any clauses with regard to the JCT Minor Works Building Contract with Contractor's Design (MWD) 2016 Edition.
- 18.2.1 In the event that the Works PO includes an element of design work as carried out by the addressee of the purchase order, the following provisions of the JCT Minor Works Building Contract with Contractor's Design (MWD) 2016 Edition shall be deemed to be effective as per clause 18.2:
- Clause 1.1: Definitions
  - Clause 2.1: Contractor's obligations
  - Clause 2.5: Divergences from Statutory Requirements
  - Clause 2.10: Defects
  - Clause 3.5: Non-Compliance with instructions
  - Clause 3.9: CDM Regulations
  - Section 4: Payment
- No other clauses of the JCT Minor Works Building Contract with Contractor's Design (MWD) 2016 or shall apply to this Terms of Purchase outside those listed in this clause 18.2.1.
- 18.2.2 Alternatively, in the event that the Works PO does not include any element of design work to be carried out by the addressee of the purchase order, the following provisions of the JCT Minor Works Building Contract (MW) 2016 Edition shall be deemed to be effective as per clause 18.2:
- Clause 1.1: Definitions
  - Clause 2.1: Contractor's obligations
  - Clause 2.2: Materials, goods and workmanship
  - Clause 2.6: Divergences from Statutory Requirements
  - Clause 2.11: Defects
  - Clause 3.5: Non-Compliance with instructions
  - Clause 3.9: CDM Regulations
  - Section 4: Payment

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No other clauses of the JCT Minor Works Building Contract (MW) 2016 or shall apply to this Terms of Purchase outside those listed in this clause 18.2.2.

- 18.3 For the avoidance of doubt, the meaning of any terms within the incorporated provisions of either 18.2.1 or 18.2.2 in relation to a Works PO shall be interpreted as if they had been restated in full as a part of this clause 18 (*mutatis mutandis*) and deemed to carry the meaning provided by the contract of which they have been adopted.
- 18.4 The wording within this clause 18 shall strictly apply to Works POs only.
- 18.5 In the event that Clause 18.2.1 applies you shall maintain professional indemnity insurance, public liability insurance and employer's liability insurance to cover the liabilities that may arise under the contract. The minimum cover on a per-claim basis shall be £10,000,000 in respect of public liability insurance and £5,000,000 in respect of professional indemnity and employer's liability insurance.
- 18.6 In the event that Clause 18.2.2 applies you shall maintain public liability insurance and employer's liability insurance to cover the liabilities that may arise under the contract. The minimum cover on a per-claim basis shall be £10,000,000 in respect of public liability insurance and £5,000,000 in respect of employer's liability insurance.
- 18.7 In any event you shall maintain (i) construction all risks insurance and (ii) shall indemnify us against any expense, liability, loss, claim or proceedings in respect of any loss injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of, in the course of or by reason of the carrying out of the Works or your negligence.
- 18.8 You shall provide us with your insurance certificates and most recent premium receipt upon request.