

# TROX UK'S TERMS AND CONDITIONS OF PURCHASE

## 1. General

1.1 The Conditions set out herein shall apply to and be incorporated into the Contract between TROX UK Limited (company number 713650) (hereinafter called "the Buyer") and the Seller. These Conditions shall prevail over any proffering or production by the Seller of alternative terms and/or conditions, or any other terms which are implied through trade, custom, practice or course of dealing.

1.2 No servant or agent of the Buyer has authority to enter into a contract which dispenses with or varies these Conditions except a director of the Buyer, in which case such dispensation or variation must be confirmed in writing otherwise it is invalid.

1.3 The Buyer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

1.4 All of these Conditions shall apply to the provision of Goods and/or Services except where the application to one or the other is specified.

## 2. Definitions

2.1 "Conditions" means these terms and conditions.

2.2 "Contract" means the contract between the Buyer and the Seller for the supply of Goods and/or Services in accordance with these Conditions.

2.3 "Goods" means the goods (or any part of them) as described in the Seller's quotation.

2.4 "Purchase Order" means the Buyer's order for the supply of Goods and/or Services from the Seller in accordance with the Seller's quotation and these Conditions, whether confirmed in writing or over the telephone.

2.5 "Seller" means the person or firm who sells the Goods and/or Services to the Buyer.

2.6 "Services" means the services to be supplied by the Seller to the Buyer as described in the Purchase Order which may include erecting and/or installing the Goods.

## 3 The Purchase Order

3.1 The Purchase Order constitutes an offer from the Buyer to purchase Goods and/or Services in accordance with these Conditions. The Purchase Order shall be deemed to have been accepted by the Seller when the Seller issues written confirmation to accept the Purchaser Order or, in the absence of written acceptance of the Purchase Order, on the date that the Seller commences provision of the Services or delivery of the Goods, as the case may be, on which date the Contract shall be formed.

3.2 This Contract constitutes the entire agreement between the parties.

## 4 Goods

4.1 The Seller warrants to the Buyer that it shall supply Goods which will:

4.1.1 be of the quality described in the Purchase Order and/or the Seller's trade literature and publications;

4.1.2 correspond with any samples, drawings, descriptions or specifications provided to the Buyer by the Seller;

4.1.3 be of merchantable quality and comply with the Buyer's quality control procedures as may be specified upon the Buyer's enquiry or Purchase Order;

4.1.4 be fit for the purpose which the Buyer has indicated and/or fit for the purpose for which such goods are usually supplied;

4.1.5 where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

4.1.6 comply with any performance and other specifications stated in the Purchase Order, and any applicable legislation in force at the date of this Contract.

4.2 The Seller shall, as and when requested by the Buyer, provide documentary evidence showing compliance with the above warranties.

4.3 The Buyer reserves the right to reject any of the Goods which do not reach the requisite standards of design, material, workmanship or quality or which are not in accordance with the Seller's quotation, the Purchase Order or these Conditions. The Buyer may return such rejected Goods to the Seller at the Seller's expense and risk and the Seller shall be liable to the Buyer for any costs incurred by the Seller as a result of such non-conformance of the Goods with this Contract.

## **5. Delivery of the Goods**

5.1 The Seller shall deliver the Goods, unless otherwise agreed:

5.1.1 on the date specified in the Purchase Order or, if no such date is specified, within 28 days of the date of the Purchase Order;

5.1.2 to the Buyer's address at Caxton Way, Thetford, Norfolk, IP24 3SQ or such other address as specified in the Purchase Order or otherwise notified by the Buyer to the Seller prior to the date of delivery; and

5.1.3 during the Buyer's normal hours of business on a business day, unless otherwise instructed by the Buyer.

5.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the location required by the Buyer pursuant to this Contract.

5.3 The risk to the Goods shall pass to the Buyer on completion of the delivery.

5.4 The title to the Goods shall pass to the Buyer on the earlier of completion of the delivery or payment for the Goods.

5.5 The Seller shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Seller to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Buyer to terminate this Contract.

## **6. Services**

6.1 Where under the Purchase Order the Seller is to provide Services, unless otherwise agreed, the Seller will provide (within the cost agreed in the Purchase Order) all materials, labour, haulage, power tools, tackle, scaffolding, plant and any apparatus and equipment which may be necessary to execute and complete the Services.

6.2 The Seller shall from the date set out in the Purchase Order and for the duration of this Contract provide the Services to the Buyer in accordance with the terms of this Contract.

6.3 The Seller warrants and undertakes that it shall exercise all the reasonable skill, care and diligence to be expected of a competent, qualified and experienced member of its profession undertaking erection or installation when performing the Services.

6.4 The Seller shall use the best quality goods, materials, standards and techniques to ensure that the Services provided to the Buyer will be free from defects in workmanship, installation and design.

## **7. Payment**

7.1 The price for the Goods shall be the price as stated in the Purchase Order and such price shall be deemed to be inclusive of all costs for packaging, insurance and carriage of the Goods. The Seller shall invoice the Buyer at any time on or after the goods are delivered. Payment shall become due on the date that the Buyer receives the Seller's invoice, with the final date for payment 30 days thereafter.

7.2 The price for the Services shall be those set out in the Purchase Order or otherwise agreed between the parties. In respect of Services, the Seller shall invoice the Buyer on completion of the Services or monthly, whichever is the soonest. The Seller shall submit to the Buyer an invoice for each instalment of the charges specifying the sum that the Buyer considers will become due on the payment due date and the basis on which that sum is calculated. Payment shall be due on the date that the Seller receives each invoice and the final date for payment shall be 30 days after the payment becomes due. To the extent that the performance of the Services constitutes 'construction operations' within the meaning of section 105 of the Housing Grants, Construction and Regeneration Act 1996 (as amended) the following provisions apply:

7.2.1 no later than five days after payment becomes due the Buyer shall notify the Seller of the sum that the Buyer considers to have been due at the payment due date and the basis on which that sum is calculated (the "Payment Notice");

7.2.2 unless the Buyer has served a notice under condition 7.2.3, it shall pay the Seller the sum referred to in the Payment Notice (or if the Buyer has not served a Payment Notice, the sum referred to in the invoice) (the "Notified Sum") on or before the final date for payment; and

7.2.3 not less than five days before the final date for payment the Buyer may give to the Seller a notice that it intends to pay less than the notified sum (a "Pay Less Notice)". Any Pay Less Notice shall specify the sum that the Buyer considers to be due on the date the notice is served and the basis on which that sum is calculated.

## **8. Indemnity**

8.1 The Seller shall keep the Buyer indemnified against all claims for liabilities, losses, costs and damage arising directly or indirectly from:

8.1.1 injury or death to persons or property caused by the delivery of the Goods and/or performance of the Services to the extent that such injury, death or damage to property is attributable to the acts or omissions of the Seller or those under the Seller's control;

8.1.2 defective design or workmanship;

8.1.3 negligence of the Seller; or

8.1.4 any breach of Contract by the Seller.

8.2 The Seller shall maintain, at the Seller's expense, insurance to enable such indemnity to be effected including any insurance required by the Buyer's contracts with any third party (such contract being available for inspection at the Buyer's head office). At the Buyer's request, the Seller shall provide the Buyer with documentary evidence that such insurances are in place.

8.3 Without prejudice to the foregoing, the Seller hereby undertakes not to cause or contribute the Buyer to breach any contract with a third party, of which the seller has deemed notice by virtue of its being available to him for inspection.

## **9. Assignment and Sub-Contracting**

9.1 The Buyer may assign the benefit of this Contract with notice but without consent.

9.2 The Seller shall not assign or sub-contract this Contract or any or part thereof.

## **10. Free Issue**

10.1 Materials, plant, tools, jigs and other equipment supplied by the Buyer for use in connection with any contract with the Seller remain the property of the Buyer. Responsibility for the safe custody of such equipment and its maintenance in good condition shall rest with the Seller until due performance of the Contract has been completed and such equipment has been returned to the Buyer in a condition which is satisfactory to the Buyer.

## **11. Confidential Material**

11.1 All designs, drawings, specifications and information supplied in connection with this Contract are confidential and their use by the Seller may be strictly confined to the Seller's works. Copyright, and all other like rights in such drawings, designs, specifications and information shall be vested in the Buyer and shall remain so vested and the Seller acknowledges that it shall obtain no such rights in consequence of the performance of the Contract.

## **12. Patents**

The Seller shall pay all royalties and/or fees on patented articles, processes and/or registered designs and take all other steps necessary to maintain the same and shall indemnify the Buyer against all claims or costs in respect thereof and against all claims, damages, costs or proceedings in respect of or in connection with any patent, registered design, copyright or other monopoly privilege which may be infringed by the Goods and/or Services supplied under this Contract and/or the patent processes and/or the registered designs thereof and the Seller shall be responsible for complying with all notices required by any Act of Parliament, and Statutory Instrument, Rule or Order under any Act of Parliament or any regulation or bye-law of any local authority and statutory undertaking which has any jurisdiction with regard to the manufacture of the goods. The Seller shall pay and indemnify the Buyer against any liability in respect of any fees of charges (including any rates or taxes) legally demanded under any Act of Parliament, any Statutory Instrument, Rule or Order made under any Act of Parliament or any regulation or bye-law of any local authority or any statutory undertaking.

### **13. Delay**

13.1 In the event of the Buyer's programme of work being interrupted or restricted by lock-outs or strikes, fire or any other exceptional cause, the Buyer shall be at liberty to defer the date or dates of delivery of the Goods and/or Services without incurring in any way additional liabilities and the payment for Goods or Services to be supplied hereunder may be suspended or postponed at the Buyer's option until the circumstance(s) preventing or hindering the use of such goods or work has ceased.

### **14. Termination**

14.1 The Buyer may terminate all or part of the Seller's engagement under this Contract at any time by giving 14 days' written notice.

14.2 The Buyer may immediately terminate the Seller's engagement under this Contract by written notice if:

14.2.1 the Seller fails to deliver the Goods and/or complete the Services within the time set out in the Purchase Order;

14.2.2 the Seller is in material breach of its obligations under this Contract and fails to remedy such breach within 14 days of receiving written notice requiring it to do so; or

14.2.3 the Seller becomes insolvent as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996.

### **15. Consequences of termination**

15.1 On termination in accordance with condition 14 the Buyer shall pay the Seller any amount properly due for payment under this Contract in respect of the terminated Goods and/or Services at the date of termination.

15.2 If the Seller's engagement under this Contract is terminated in accordance with condition 14, the Seller shall assign the benefit of any Goods, materials or documents relating to the Services to the Buyer.

15.3 If the Seller's engagement under this Contract is terminated in accordance with condition 14.2 the Seller shall pay the Buyer the reasonable cost of procuring a replacement supplier to deliver the Goods and/or carry out any unperformed Services. To the extent that such cost exceeds the fee that is due to the Seller, any such cost shall be deducted from the amount payable to the Buyer under condition 15.1 and if any shortfall remains following such deduction the Buyer may claim it as a debt due from the Seller.

15.4 Termination of the Seller's engagement under this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.

### **16. Warranties**

16.1 Any warranty given by the Seller to the Buyer in respect of the Goods shall be fully assignable by the Seller to any third party without reference to the Seller.

### **17. Health and Safety**

The Seller warrants that the Goods supplied will be safe and without risk to health when properly used, and the Seller shall indemnify the Buyer against all liability, costs or expenses incurred by the Buyer arising out of any breach of this warranty.

### **18. Disputes**

18.1 As a condition precedent to any dispute or difference being decided by the Courts, the Seller and Buyer agree to attempt amicable settlement by embarking upon an Alternative Dispute Resolution ("ADR") procedure as recommended by the Centre for Dispute Resolution London.

18.2 It is mutually agreed ADR can take place before Court proceedings or concurrently with Court proceedings.

### **19. Governing Law**

19.1 The Contract shall be governed in accordance with English law and the parties hereby submit to the

exclusive jurisdiction of the English Courts.