

SOUTHERN ELECTRIC CONTRACTING LIMITED

CONDITIONS OF PURCHASE

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Company: Southern Electric Contracting Limited (SEC) and its subsidiary or associated Companies

Contract: the Order and the Seller's acceptance of the Order.

Goods: any goods agreed in the Contract to be purchased by the Company from the Seller (including any part or parts of them).

Order: the Company's written instruction to supply the Goods, incorporating these Conditions.

Seller: the person, firm or company who accepts the Company's Order.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.4, these conditions are the only conditions upon which the Company is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods by the Company from the Seller shall be deemed to be an offer by the Company to buy Goods subject to these conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.4 These conditions apply to all the Company's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by the Group Purchasing Manager of the Company.

3. QUALITY AND DEFECTS

3.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by the Company to the Seller and in particular but without limitation of the foregoing the seller warrants that the goods shall fully comply with all the requirements of the Restriction on Hazardous Substances Regulations.

3.2 The Company's rights under these conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979.

3.3 At any time prior to delivery of the Goods to the Company the Company shall have the right to inspect and test the Goods at all times.

3.4 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by the Company to the Seller, the Company shall inform the Seller and the Seller shall immediately take such action as

is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.

3.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

3.6 If any of the Goods fail to comply with the provisions set out in condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in condition 12.

3.7 The Parties acknowledge that any signature by or on behalf of the Company on a delivery note does not signify acceptance of the quantity or quality of the Seller's Goods.

4. WARRANTY/INDEMNITY/HEALTH & SAFETY

4.1 The Seller shall keep the Company indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:

- (a) defective design, workmanship, quality or materials;
- (b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and
- (c) any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

4.2 The Supplier shall be solely responsible for the Health and Safety of its employees, agents and sub-contractors whilst on the premises of the Company and shall comply in all respects with the provisions of the Health and Safety at Work Act 1974 in the performance of its obligations under this Contract.

4.3 The Supplier will ensure that the Goods do not contain asbestos or any other hazardous materials.

4.4 Except as expressly provided within this Contract, to the maximum extent permitted by law, the Company shall not be liable to the Supplier by way of indemnity or by reason of any breach of this Contract or of any statutory duty or by reason of tort (including but not limited to negligence) for any direct, punitive, exemplary, special, indirect or consequential loss or damages whatsoever suffered by the Supplier.

5. DELIVERY

5.1 The Goods shall be delivered, carriage paid, to the Company's place of business or to such other place of delivery as is agreed by the Company in writing prior to delivery of the Goods. The Seller shall off-load the Goods by mechanical means at its own risk as directed by the Company.

5.2 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 72 (seventy two) hours of the date of the Order.

5.3 The Seller shall invoice the Company upon, but separately from, despatch of the Goods to the Company.

5.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. In the case of delivery of the Goods directly to a place of delivery which is not the Company's place of business the Seller shall provide to the Company a signed Proof of Delivery.

5.5 Time for delivery shall be of the essence. The Company may at its sole discretion extend the time for delivery by notice in writing to the Supplier.

5.6 Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company in normal business hours.

5.7 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:

- (a) cancel the Contract in whole or in part;
- (b) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
- (c) recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and
- (d) claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

5.8 If the Seller requires the Company to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material shall only be returned to the Seller at the cost of the Seller.

5.9 Collection of pallets and other waste media will be the responsibility of the Seller who shall arrange collection of all waste materials supplied. Any pallets or waste media not collected will be disposed of by the Buyer in an environmentally friendly manner, all resulting costs will be passed on to and paid by the Seller.

5.10 Where the Company agrees in writing to accept delivery by installments the Contract shall be construed as a single contract in respect of each installment. Nevertheless failure by the Seller to deliver any one installment shall entitle the Company at its option to treat the whole Contract as repudiated.

5.11 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.

5.12 The Company shall not be deemed to have accepted the Goods until it has had 21 days to inspect them following delivery. The Company shall also have the right to reject the Goods as though they had not been accepted for 21 days after any latent defect in the Goods has become apparent.

6. RISK AND PROPERTY AND INSURANCE

6.1 The Goods shall remain at the risk of the Seller until delivery to the Company is complete (including off-loading and stacking) in accordance with the Contract.

6.2 The property of the Goods shall pass to the Company upon delivery unless payment is made prior to the delivery when it shall pass to the Company once payment has been made and the Goods have been appropriated to the Contract.

6.3 The Seller shall maintain adequate insurance to the full replacement value of the Goods prior to delivery of whilst the risk lies with the Seller.

6.4 The Seller shall maintain Product Liability Insurance for a minimum amount of £2,000,000 during delivery and throughout any warranty period.

6.5 The Seller shall maintain Public Liability and Employer's Liability Insurance for a minimum amount of £2,000,000 for any one occurrence through the Contract period.

6.6 The Supplier shall (if applicable) maintain Contract Works or Contractors (All Risks) Insurance for the full value of the Contract.

7. PRICE

7.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing, shall be:

- (a) exclusive of applicable Value Added Tax (which shall be payable by the Company subject to the receipt of a V.A.T. invoice; and
- (b) inclusive of all charges for packaging, shipping, carriage, insurance and delivery of the Goods and any duties, imports or levies other than Value Added Tax.

7.2 No variation in the price of the Goods or Services may be made (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) without the prior written consent of an authorized representative of the Company by way of a written amendment to this Purchase Order.

8. TERMS OF PAYMENT

8.1 Subject to 8.2 the Company shall pay the price of the Goods properly invoiced and quoting the Company order number within 60 days of the end of the month in which the Goods are delivered to the Company's place of business or to such other place of delivery as is agreed by the Company in writing prior to delivery of the Goods. Time for payment shall not be of the essence of the Contract but the Company shall receive a settlement discount of 2.5% of the value of each and every invoice settled in accordance with the terms of this Condition.

8.2 The Company will only be required to pay the price of the Goods once it has received a signed Proof of Delivery in accordance with clause 5.4.

8.3 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.

8.4 The Seller shall not be entitled to suspend deliveries of the Goods as a result of any sums being outstanding.

9. CONFIDENTIALITY

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Company or its agents and any other confidential information concerning the Company's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

10. THE COMPANY'S PROPERTY / INTELLECTUAL PROPERTY

10.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Company to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Company but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.

10.2 If any Goods or services are manufactured or supplied to the Company's designs or specifications, or where the Company has paid or is to pay the Seller for design, research or development work, ownership of such works, designs, data, including all intellectual property rights shall vest in the Company and the Seller shall take all reasonable steps to vest such rights with the Company.

10.3 The Seller shall not, without the Company's prior written consent, use the Company intellectual property rights (including, but not limited to, copyrights, trading styles, trade marks, etc.).

11. TERMINATION

11.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

11.2 The Company shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

(a) the Seller commits a material breach of any of the terms and conditions of the Contract; or

(b) any distress, execution or other process is levied upon any of the assets of the Seller; or

(c) the Seller convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or

(d) the Seller ceases or threatens to cease to carry on its business; or
(e) the financial position of the Seller deteriorates to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfill its obligations under the Contract has been placed in jeopardy.

11.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

12. REMEDIES

Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Company:

(a) to rescind the Order;

(b) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;

(c) at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

(d) to refuse to accept any further deliveries of the Goods but without any liability to the Seller;

(e) to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and

(f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

13. ASSIGNMENT

13.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13.2 The Company may assign the Contract or any part of it to any person, firm or company.

14. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

15. GENERAL

15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

15.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

16. MISCELLANEOUS

16.1 The Supplier shall not make or offer gifts or gratuities of any type to the Company's employees or members of their families.

16.2 The Supplier shall at all times comply and act as to enable the Company to comply with (and shall indemnify the Company against all liabilities, loss, damages, costs and expenses, including legal expenses, incurred or paid by the Company as a result of or in connection with a breach of this Condition) all applicable laws, statutory regulations and enactments.

16.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

16.4 The Supplier shall be liable for the value of any materials and/or components which the Company may send to it in connection with this Purchase Order and shall bear the cost of replacement of any such materials and/or components lost damaged or destroyed from any cause whatsoever.

16.5 The Supplier guarantees all Goods supplied by it for a minimum period of 12 months from acceptance or initial normal working operation whichever is the latter, and shall replace, without cost to the Company, any of the Goods which shall prove defective under normal operating conditions during this period. All costs incurred in dismantling or re-installing defective Goods shall be to the Suppliers account.