

William Garvey LTD Terms and Conditions for Purchase & Subcontract Orders

1. Definitions and Interpretations

In these conditions the following definitions shall apply

- 1.1 WGL shall mean William Garvey Limited
- 1.2 The "Supplier" shall mean any company, firm, partnership or individual that contracts for the supply of goods and/or services to WGL.
- 1.3 The "Work" shall mean the supply of goods and/or services described in the Contract Documents.
- 1.4 The "Contract Documents" shall mean the WGL Invitation to Tender and all documents and conditions therein, the Abstract of Particulars, the Supplier's Tender, the WGL Purchase Order and all documents and conditions named therein.
- 1.5 The "Principal Contract" shall mean the Contract between WGL and the Employer and/or Main Contractor.
- 1.6 "Sureties" shall mean a Performance Bond or a Parent Company Guarantee or Employer Sub-Contract Warranty.
- 1.7 Tender shall mean any estimate or quotation
- 1.8 This Contract is subject to the Laws of England and Wales.

2.0 The Contract

- 2.1 Except where otherwise agreed in Writing signed by a Director of WGL or by the operation of an express provision in the WGL Invitation to Tender, the Supplier shall observe, perform, and comply with these conditions. Both parties hereby agree to be bound by those conditions to the exclusion of all others including the Supplier's own terms or conditions whether or not expressly contained in or referred to in any subsequent representation or in any other document whatsoever and notwithstanding any previous course of dealings between the parties. Except where otherwise expressly agreed these conditions shall also apply to all supplementary orders subsequently placed by WGL with the Supplier in respect of this contract.
- 2.2 Except where otherwise expressly agreed by WGL, any Tender submitted to WGL by the Supplier shall remain open for its acceptance unless and until WGL receives a written notice of its withdrawal.
- 2.3 The Supplier's attention is drawn to the Principal Contract Particulars that are included in WGL listed documents attached with the order. The Supplier is deemed to have full knowledge of and as so far as they are applicable to the Works agrees to comply with the provisions of the Principal Contract as though the same were incorporated herein and WGL were the Employer and the Supplier were WGL. Any conditions contained in the Supplier's Tender or own terms and conditions shall be excluded.

3.0 The Tender Price

- 3.1 The Supplier's Tender shall be deemed to include everything necessary for the proper execution of the Works to meet these conditions. No claims for additional costs will be entertained.

- 3.2 The Tender shall cover costs for carriage, freight, insurance import/export duties and all other incidental costs and charges for making delivery. All consular charges or any other taxes, stamp and other duties, public dues, levies and tariffs of any kind and any other surcharges whatsoever.

- 3.3 The Tender shall also be deemed to include for the costs of all necessary labour and overtime and any weekend working which may be necessary for the proper performance of the Works.

- 3.4 The Tender shall be deemed to be submitted on a fixed price basis without escalation.

4.0 Packing and Delivery of Materials

- 4.1 Where the Contract includes for the supply of materials, the price shall be deemed to include for the packing of all materials with sufficient care to ensure that they are in good condition at the time of their eventual installation.

- 4.2 Except where otherwise agreed, the price shall be deemed to include delivery of all materials to the location specified in the Purchase Order. The Supplier shall be responsible for any additional expense incurred due to errors made in respect of the delivery.

- 4.3 The delivery date for materials shall be as stated on the Subcontract/Purchase Order. Any failure to meet these dates shall result in the additional expenses for this failure to be borne by the Supplier.

5.0 Property and Risk in Materials

- 5.1 Notwithstanding any other term or condition whatsoever or statute of Common Law to the contrary the property in materials supplied shall remain in the Supplier until they are delivered at the point specified in the Subcontract/Purchase Order and accepted by WGL save for when WGL pay/part pay for the goods in advance when property in the materials shall be solely with WGL

- 5.2 The Supplier shall warrant that it has good unencumbered title to any and all materials that shall pass to WGL.

- 5.3 The Supplier shall be responsible for any loss or damage to the materials until they have been fully, finally and properly incorporated into the Works. Where the supplier has contracted for the supply of goods only the Supplier shall be responsible for any loss or damage until goods are unpacked, checked and accepted by WGL.

6.0 Payment

- 6.1 The Supplier shall if required by WGL provide sureties to be approved by WGL for the performance of the Contract. The guarantee shall be in a form to be prescribed by WGL and the costs of preparing, completing, and stamping the document shall be borne by the Supplier

- 6.2 The amount to be paid to the Supplier, the terms of payment and the timing of payment to him shall be

William Garvey LTD Terms and Conditions for Purchase & Subcontract Orders

- as defined in the WGL Purchase Order including any retention provisions.
- 6.3** Where the Work is for the supply of materials only WGL shall pay for the goods, in each case without prejudice to any early payment discount or benefit that may be agreed (a) by the end of the month after the month in which the delivery is made if it receives an appropriate invoice before the end of the month of delivery. Time of payment by WGL is not of the essence of any contract.
- 6.4** Where payment relates to a subcontract order with interim and final payment provisions, then the following are applicable:
1. Not later than five days after the Due Date for payment as defined in the Purchase Order, WGL shall issue a notice specifying the amount of payment proposed to be made where an application is made by the Supplier in compliance with Application Dates defined on the Purchase Order.
 2. Three days before the Final Date, as defined on the Purchase Order, WGL shall inform the Supplier the amount WGL propose to withhold from the payment with reasons.
- 6.5** A failure to issue a notice under 6.4 and/or 6.5 above does not constitute an acceptance that the sum applied for is the sum due.
- 7.0 Variation Work**
- 7.1** The Supplier shall forthwith comply with any instruction of WGL requiring the variation to the Work and no such variation shall vitiate the Contract. No payment shall be made for any variation work without a written instruction from WGL.
- 7.2** The price for authorised variation work shall be matter for agreement, provided always that the price to be paid to the Supplier shall not exceed the price paid to WGL under the Principal Contract for the variation work concerned.
- 7.3** It shall be a condition precedent to payment of any variation work that the WGL Project Manager or Quantity Surveyor shall certify in writing the said variation work has been completed in accordance with the Contract and where appropriate has accepted for record purposes only, the Supplier's written statement of labour, materials and plant expended.
- 8.0 Progress and Completion**
- 8.1** The programme requirements for the purposes of the Contract shall be defined in the WGL subcontract/Purchase Order or detailed in the Contract Documents including the normal working hours for the site.
- 8.2** The Supplier shall execute the Work in accordance with the said programme requirements and shall keep pace with the progress of the site work and shall proceed with due expedition so as not to cause delay or disruption to WGL or to any trade employed upon the works and to ensure completion of the Principal Contract by the completion date therein, subject to any properly granted extension of time.
- 8.3** Upon it becoming reasonably apparent that the regular progress of this Work is delayed or is likely to be delayed the Supplier shall forthwith give written notice of the causes to WGL, who may at their discretion grant a fair and reasonable extension of time having agreed to any extension which may be granted under the Principal Contract.
- 8.4** If the Supplier shall default in any respect under this Contract WGL shall issue a notice of non-conformity to which the Supplier has seven days to rectify the default.
- 8.5** If the Supplier fails to rectify any default under clause 8.4 they shall pay or allow WGL such sum as WGL shall reasonably estimate has been the amount of loss or damage thereby caused including any damages payable by WGL under the Principal Contract.
- 9.0 Specification, plans, drawings etc**
- 9.1** Any specification, plans, drawings, patterns or design supplied by WGL in connection with the Contract shall remain its property and all the information contained therein shall be treated as confidential to the Supplier. The Supplier shall not divulge any information relating in any way whatsoever to WGL business or interests or that of its Principals and the Supplier shall not make use of any such information except for the sole purpose of implementing the Contract.
- 9.2** The Supplier shall examine all information supplied to him by WGL. All dimensions shall be verified on site by the Supplier. WGL gives no warranty whatsoever in respect of said information.
- 10. Quality, Inspection and Defects**
- 10.1** The Supplier shall execute and complete the Work including any authorised variations thereto and the making good of any defects, shrinkage and other faults in accordance with the Contract Documents and to the entire satisfaction of WGL.
- 10.2** If any of the materials forming part of the works shall fail to meet the requirements of the Contract, WGL may by written notice given at any time reject such goods and materials irrespective of whether or not the property or risk in them has passed to WGL. If WGL does so exercise its rights of rejection the Supplier shall forthwith rectify the defective materials at his own expense. In the event of any default by the Supplier in meeting requirements of this clause, the Supplier shall be liable for the cost of rectification by others and any consequential loss or damage sustained by WGL arising there from.
- 11.0 Site Facilities and Attendances**
- 11.1** In the case of sub contract works WGL shall provide the Supplier with the facilities and attendances as described in the listed documents contained in the subcontract order.

William Garvey LTD Terms and Conditions for Purchase & Subcontract Orders

12.0 Indemnity

12.1 The Supplier shall indemnify and hold harmless WGL from and against all liabilities, loss, damages, costs, charges, expenses (including without limitation legal fees and expenses, expenses incurred in claims preparation and adjudication expenses), actions, proceedings, claims and demands incurred by the Supplier and arising directly or in connection with the Supplier's breach of any obligations under this Contract.

12.2 The Supplier shall indemnify WGL against and from any claims, causes of action, damages, costs, loss and expense whatsoever in respect of any damage to property/and or personal injury or death of any persons regardless of whether the person was an employee or member of the public arising out of or in connection with the work or any breach of the Supplier's warranties whether express or implied.

12.3 Without prejudice to his obligations to indemnify WGL under clauses 12.1 and 12.2 the Supplier shall ensure they have in place and maintain Employer's Liability insurance complying with all relevant legislation and Public Liability insurance providing cover of not less than £5,000,000 or as otherwise specified in any one event. Before commencing work on site and whenever else required to do so, the Supplier shall provide WGL with documentary evidence that the insurances are in place and are being maintained. Failure to comply with this requirement would be adequate reason for WGL to determine this Contract and withhold any payment due or becoming due.

13.0 Information

13.1 WGL shall not be liable to the Supplier in respect of or in relation to any disruption or delay caused to the Supplier arising from or in connection with the late receipt or non-receipt by the Supplier of any instructions, drawings or other information unless the Supplier has made a written application to WGL for such.

13.2 Any instructions, drawings or other information relating to the Works which are requested from the Supplier must be provided in due time so as not to cause any disruption or delay to the works to be performed under the Principal Contract.

14.0 Compliance with Statutory and other Regulations

14.1 The Supplier shall comply and shall ensure that his sub-contractors, servants and agents shall comply with every applicable statute Regulation or Direction, by-law or other lawful requirement or instruction. Any breach of the foregoing shall be deemed to be a breach of Contract.

14.2 Without prejudice to the generality of the foregoing the Supplier shall conform to legislation concerned with health and safety at work. Employers and Public Liability Insurance and obtain every Licence and authority and pay any fees that may be required in connection with the work.

15.0 Determination

15.1 WGL may without prejudice to any other of its rights and remedies determine the Contract for any of the following reasons:-

1. Determination of the Principal Contract.
2. Failure by the Supplier to carry out the WGL variations or other lawful instructions.
3. Failure of the Supplier to proceed diligently with the manufacture and supply of the goods or execution of the work.
4. Failure of the Supplier to rectify defective material or workmanship when required to do so.
5. Any act of bankruptcy, liquidation, winding up, administration, receivership, insolvency on the part of the Supplier and any deed or arrangement with its creditors, enforcement of security or legal process or repossessions any one of which shall be regardless as a breach of Contract.

15.2 Any event of determination under this clause the Supplier shall not be entitled to further payment until the materials have been supplied and/or until the completion of the work by WGL or by others whereupon any payment balance due for the value of the work shall be met less the amount of any claim WGL may have arising out of breach of Contract by the Supplier and any other sum or property due to WGL from the Supplier whatsoever and howsoever arising.

15.3 If this Contract or the Supplier's employment under this Contract are terminated, the Supplier shall not be entitled to claim for loss of profit, loss of Contract, loss of revenue, loss of opportunity or otherwise or any other indirect or consequential loss against WGL.

16.0 Assignment or sub-letting

16.1 WGL may at its discretion assign the benefits of this Contract to others. The Supplier shall not assign or sub-let the work or any part thereof without written permission of WGL.

17.0 Rights of Third Parties

17.1 No term in this Agreement shall confer or purport to confer any third party any benefit or the right to enforce any term of this Agreement. The provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

18.0 Adjudication

18.1 A party to this Contract has the right to refer a dispute arising under the Contract for Adjudication. The procedure for said adjudication shall be that as set out in the Scheme for Construction Contracts (England and Wales) Regulations 1998.

William Garvey LTD Terms and Conditions for Purchase & Subcontract Orders

- 18.2 The Supplier must request from WGL the name of the adjudicator or nominating body.