



## **1. INTERPRETATION**

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

**"Stonbury"** means Stonbury Limited (company number: 01721842) whose registered office is at 187C High Street, Cranfield, Bedfordshire, MK43 0JB;

**"Contract"** means the Order and the Supplier's acceptance of the Order incorporating these terms and conditions.

**"Goods"** means any goods agreed in the Contract to be bought by Stonbury from the Supplier (including any part or parts of them).

**"Order"** means Stonbury's written instruction to buy the Goods, incorporating these terms and conditions.

**"Supplier"** means the person, firm or company who accepts Stonbury's Order.

**"Bribery Act"** means the Bribery Act 2010.

**"Specification"** means any specification for the Goods, including any related plans, patterns or drawings supplied or advised by Stonbury to the supplier.

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 Clause headings do not affect the interpretation of these conditions.

1.5 A reference to a person includes where appropriate a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

1.6 A reference to a party includes its successors or permitted assigns.

## **2. APPLICATION OF TERMS**

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

2.2 Each Order for Goods by Stonbury from the Supplier shall be deemed to be an offer by Stonbury to buy Goods subject to these conditions and no Order shall be accepted until the Supplier 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 Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.4 These conditions apply to all Stonbury's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by a director of Stonbury.

## **3. QUALITY AND DEFECTS**

3.1 The Goods shall correspond with their description and 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 (if applicable) any Specification.

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

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



3.4 If the results of such inspection or testing cause Stonbury to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any Specification. Stonbury shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition Stonbury shall have the right to require and witness further testing and inspection.

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

3.6 If any of the Goods fail to comply with the provisions set out in clause 3 Stonbury shall be entitled to avail itself of any one or more remedies listed in clause 14.

#### **4. INDEMNITY**

The Supplier shall keep Stonbury 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), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by Stonbury as a result of or in connection with:

(a) defective 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;

(c) any errors or omissions in drawings, calculations, packing details or other particulars supplied by the Supplier, whether such information has been approved by Stonbury or not, (provided that such errors or omissions are not due to inaccurate information given to the Supplier by Stonbury); and

(d) any claim made against Stonbury in respect of any liability, loss, damage, injury, cost or expense sustained by Stonbury'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 Supplier.

#### **5. DELIVERY**

5.1 The Goods shall be delivered, carriage paid, to the location specified in the Order or to such other place of delivery as is agreed by Stonbury in writing prior to delivery of the Goods. If the Goods are delivered to the incorrect location then the Supplier will be responsible for any additional expenses incurred by Stonbury in delivering the Goods to the location specified in the Order. The Supplier shall off-load the Goods at its own risk as directed by Stonbury.

5.2 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place on a date agreed between Stonbury and the Supplier.

5.3 The Supplier shall invoice Stonbury upon, but separately from, despatch of the Goods to Stonbury.

5.4 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, among other things, 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.

5.5 Unless otherwise stated in the Order, the Supplier shall be responsible for ensuring that any part of the Goods that may deteriorate or be damaged during transit is properly packaged.

5.5 Time for delivery shall be of the essence.

5.6 Unless otherwise stipulated by Stonbury in the Order, deliveries shall only be accepted by Stonbury 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, Stonbury 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 Supplier attempts to make;

(c) recover from the Supplier any expenditure reasonably incurred by Stonbury in obtaining the Goods in substitution from another supplier; and (d) claim damages for any additional costs, loss or expenses incurred by Stonbury which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.

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

5.9 Where Stonbury agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle Stonbury at its option to treat the whole Contract as repudiated.

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

5.11 Stonbury shall not be deemed to have accepted the Goods until it has had reasonable opportunity to inspect them following delivery. Stonbury shall also have the right to reject the Goods as though they had not been accepted for 30 days after any latent defect in the Goods has become apparent. Payment for the Goods shall not result in Stonbury being deemed to have accepted the Goods.

5.12 Stonbury shall advise the Supplier and the carrier (if any) in writing of any loss or damage to the Goods in transit as follows:-

(a) partial loss, damage or non-delivery of any packages comprising a consignment or part consignment within 7 days; and

(b) non-delivery of a whole consignment within 7 days of notice of despatch being received by Stonbury.

## **6. RISK/PROPERTY**

Ownership of the Goods shall pass to Stonbury when delivery to Stonbury is complete (including off-loading and stacking). The Goods shall remain at the risk of the Supplier until Stonbury has notified the Supplier of its acceptance of the Goods in accordance with clause 5.11 above.

## **7. PRICE**

7.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by Stonbury shall be exclusive of value added tax but inclusive of all other charges. VAT shall be shown on the Supplier's invoices as a strictly net extra charge.

7.2 No variation in the price nor extra charges shall be accepted by Stonbury.

## **8. PAYMENT**

8.1 Unless otherwise stated in the Order, Stonbury shall pay the price of the Goods by the end of the calendar month following the month in which the invoice is presented to Stonbury, but time for payment shall not be of the essence of the Contract. Stonbury reserves the right to reject any invoice that does not include an Order number.

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

## **9. VARIATION**

9.1 The Supplier shall only alter the Goods if directed to do so in writing by Stonbury. Stonbury shall have the right, from time to time, during the term of the Contract by notice in writing to direct the Supplier to add to or omit or otherwise vary the Goods and the Supplier shall comply with such written directions as though such directions were incorporated in the Contract.



9.2 If Stonbury requests a variation under clause 9.1 which would result in an increase in the price of the Goods, the Supplier shall as soon as possible, notify Stonbury in writing stating the amount of the price increase to be calculated in accordance with the pricing set out in the Supplier's tender. Stonbury shall notify the Supplier in writing within 7 days whether it wishes to proceed with the variation at the revised price or wishes the Goods to be delivered without the variation.

9.3 If the Supplier reasonably believes that a variation requested under clause 9.1 will prevent the Supplier from fulfilling any of its obligations under the Contract then it must notify Stonbury as soon as possible and Stonbury shall promptly notify the Supplier in writing whether it wants to proceed with the variation or wishes the Goods to be delivered without the variation.

## **10. SUPPLIER'S WARRANTY**

10.1 The Supplier warrants that (subject to the other provisions of these conditions) upon delivery, and for:

- (a) a period of 12 months from the date that the Goods are put into service; or
- (b) 18 months from the date of delivery (whichever shall be the shorter), the Goods shall conform with the Contract.

10.2 The Supplier shall not be liable for a breach of the warranty in clause 10.1 if the defect arises because Stonbury failed to follow the Supplier's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods.

10.3 Subject to clause 10.2, if any of the Goods do not conform with the warranty in clause 10.1 Stonbury shall be entitled to avail itself of any one or more of the remedies listed in clause 14.

## **11. CONFIDENTIALITY**

The Supplier 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 Supplier by Stonbury or its agents and any other confidential information concerning Stonbury's business or its products which the Supplier may obtain and the Supplier 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 Supplier's obligations to Stonbury and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier. The Supplier shall keep confidential the existence of the Contract and not disclose Stonbury's name as a customer of the Supplier without obtaining the prior written consent of Stonbury.

## **12. STONBURY'S PROPERTY**

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

## **13. TERMINATION**

13.1 Stonbury shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and Stonbury shall pay to the Supplier what Stonbury considers to be 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.

13.2 Stonbury shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract immediately if:

- (a) the Supplier 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 Supplier; or

(c) the Supplier has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) 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 Supplier or notice of intention to appoint an administrator is given by the Supplier 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 Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or

(d) the Supplier ceases or threatens to cease to carry on all, or substantially the whole of its business; or

(e) the financial position of the Supplier deteriorates to such an extent that in the opinion of Stonbury the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.

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

## **14. REMEDIES**

Without prejudice to any other right or remedy which Stonbury may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract Stonbury 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 Stonbury:

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

(c) at Stonbury's option to give the Supplier the opportunity at the Supplier'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 Supplier;

(e) to carry out at the Supplier'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 Supplier's breach or breaches of the Contract.

## **15. ASSIGNMENT**

15.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of Stonbury.

15.2 Stonbury may assign the Contract or any part of it to any person, firm or company.

## **16. FORCE MAJEURE**

Stonbury 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 Stonbury 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.

## 17. BRIBERY

17.1 Stonbury and the Supplier warrant and represent to the other that each shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including, but not limited to the Bribery Act and the Fraud Act 2006 ("Relevant Requirements") and neither it nor any of its offices, employees, agents, sub-contractors, or any person acting on its behalf has altered, given or agreed to give to any person any inducement or reward (or anything which might be considered to be an inducement or a reward) in connection with the parties entering into this Contract.

17.2 The Supplier shall have and maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to, adequate procedures under the Bribery Act to ensure compliance with the Relevant Requirements and will enforce them where appropriate.

17.3 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such persons terms equivalent in effect to those imposed on the Supplier in this clause 17 ("Relevant Terms").

17.4 The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to Stonbury for any breach by such persons of any of the Relevant Terms.

17.5 For the purposes of clause 17 whether a person is associated with another person shall be determined in accordance with section 8 of the Bribery Act. For the purposes of this clause a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

## 18. GENERAL

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

18.2 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.

18.3 Failure or delay by Stonbury 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.

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

18.5 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.

18.6 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principle place of business (in any other case) and shall be delivered personally or sent by pre-paid first class post, recorded delivery or commercial courier. A notice will be deemed to have been received: if delivered personally, when left at the address; if sent by pre-paid first class post or recorded delivery at 9am on the second business day after posting, or, if sent by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

18.7 Except as set out in this contract, any variation to the Contract, including the introduction of any additional terms and conditions shall only be binding when agreed in writing and signed by Stonbury.

18.8 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.