



1 Interpretation

- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.
Company: Production 78 Limited.
Conditions: these Terms and Conditions of Purchase and Hire.
Contract: the Order and the Supplier's acceptance of the Order.
Contract Period: the time period defined by the date or dates referred to in Condition 2.6.
Goods: any goods (including without limitation any plant, machinery, vehicles, equipment and accessories therefore and/or services agreed in the Contract to be purchased and/or hired by the Company from the Supplier (including any part or parts of them).
Order: the Company's written instruction to supply the Goods, incorporating these conditions. For the avoidance of doubt, an Order for Goods shall include an Order for services and these Conditions shall apply, mutatis mutandis, to services.
Premises: the Company's offices, warehouse, event site or location specified in the Contract.
Supplier: the person, firm or company who accepts the Company's Order, including but not limited to any such person, firm or company who shall be acting as the Company's subcontractor.
- 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 Condition headings do not affect the interpretation of these Conditions.
- 1.4 Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.5 Clause and schedule headings do not affect the interpretation of these Conditions.
- 1.6 References to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of these Conditions.
- 1.7 Any reference to "parties" means the parties to the Contract and "party" shall be construed accordingly.

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 Supplier 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 Supplier shall be deemed to be an offer by the Company to buy and/or hire 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 Terms and Conditions of Sale, Hire or Supply, 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 the Company's purchases and/or hires and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company.
- 2.5 Where the Supplier shall be acting as the Company's subcontractor, the Supplier shall not be considered to be an employee of the Company and shall have no power or authority to bind or pledge the Company and shall not hold itself out, or permit itself to be held out, as having any such power or authority.
- 2.6 The Supplier's obligations under the Contract shall be performed on the date or dates specified in the Order, subject to Condition 13.
- 2.7 Where the Company hires Goods from the Supplier, the following terms shall apply:
- (a) The hire charges comprising the price of the Goods shall be set out in the Order. Such charges shall cover the duration of the Contract Period;
 - (b) The Supplier shall keep the Goods in good repair, condition and working order, properly serviced and maintained throughout the Contract Period and at its own cost and expense shall be responsible for repairing or replacing Goods that have sustained damage. The Company accepts no liability for loss or damage to any Goods;
 - (c) The Supplier shall, during the Contract Period, effect and maintain a policy of insurance which shall contain terms appropriate to provide adequate coverage for any and all loss or damage which could or might arise from any breach of Condition 2.7(b) above (and without limitation, for any other type of loss or damage which could occur to the Goods during the Contract Period, whether or not occurring whilst the Goods are on the Premises) and which shall also be of an amount sufficient to provide adequate coverage for any and all such loss or damage and which shall include, without limitation, appropriate and adequate public liability cover. The Supplier shall, upon request by the Company, produce such policy of insurance to the Company for inspection together with evidence of payment of the most recent premium;
 - (d) The Company may arrange for the collection of the Goods by the Supplier during normal business hours. The Company's liability to pay the hire charges comprising the price of the Goods shall cease at the time that the Company notifies the Supplier that collection is required;

- (e) Immediately following the Company's request for collection of the Goods, the Supplier shall collect and remove the Goods from the Premises;
- (f) If any Goods are not available or only partially available for collection by the Supplier, then the Supplier will be responsible for the costs and charges of each journey; and
- (g) The Supplier shall be solely responsible, at its sole cost, for any required cleaning of the Goods at the end of the Contract Period.

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, be capable of any and all standards of performance requested by the Company, be fit for any purpose made known to the Supplier expressly or by implication, comply with any relevant current legislation and conform in all respects with the Order and specification and/or patterns, drawings and plans specified or advised by the Company to the Supplier.
- 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 and the Supply of Goods and Services Act 1982.
- 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 supplied or advised by the Company to the Supplier, the Company shall inform the Supplier and the Supplier 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 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 condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in condition 14.

4 Service Standards

- 4.1 If the Contract requires the Supplier to provide services to the Company, then the Supplier shall, throughout the duration of the Contract and without limitation:
 - (a) perform the services in a good and workmanlike manner;
 - (b) employ competent staff, and ensure that such staff are subject to adequate supervision and that they discharge their duties diligently, and supply to such staff full and proper instructions as to anything required to perform the Supplier's obligations under the Contract; and
 - (c) observe any reasonable instructions given to it by the Company in connection with the performance of its obligations under the Contract.
- 4.2 The Company shall have the right at any time during business hours to inspect any services performed by the Supplier pursuant to the Contract and the Supplier shall allow all reasonable access and assistance to the representatives of the Company to enable such representatives to carry out the inspection promptly, including providing the Company with any information that may be reasonably required.
- 4.3 The Supplier may not subcontract anything required to fulfil the Supplier's obligations under these Conditions and/or the Contract (which, for the avoidance of doubt, includes any such obligation with respect to any goods, as well as services), without the prior written consent of the Company.

5 Indemnity

- 5.1 The Supplier 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), 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 workmanship, quality or materials;
 - (b) any fault in the Goods and/or any inability or failure of the Goods to be capable of any and all standards of performance requested by the Company, to be fit for any purpose made known to the Supplier expressly or by implication, to comply with any relevant current legislation, or to conform in any respect with the Order and specification and/or any and all patterns, drawings and plans specified or advised by the Company to the Supplier;
 - (c) an infringement or alleged infringement of any intellectual property rights caused by the use, production or supply of the Goods; and
 - (d) 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 any term of the Contract by the Supplier.
- 5.2 The Supplier shall, throughout the Contract, maintain a policy of insurance which shall contain terms appropriate to provide adequate coverage for any and all risks contemplated in clause 5.1 above and which shall also be of an amount sufficient to provide adequate coverage for any and all such risks. The Supplier shall, upon request by the Company, produce such policy of insurance to the Company for inspection.

6 Delivery

- 6.1** 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 Supplier shall off-load the Goods at its own risk as directed by the Company.
- 6.2** The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days of the Order.
- 6.3** The Supplier shall invoice the Company upon, but separately from, despatch of the Goods to the Company.
- 6.4** 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. The Supplier must obtain a signature from an employee, representative or agent of the Company on the delivery note, together with the printed name of the signatory.
- 6.5** Time for delivery shall be of the essence.
- 6.6** Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company in normal business hours.
- 6.7** 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 Supplier attempts to make;
 - (c)** recover from the Supplier 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 Supplier's failure to deliver the Goods on the due date.
- 6.8** If the Supplier requires the Company to return any packaging material to the Supplier 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 Supplier at the Supplier's cost.
- 6.9** Where the Company 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 the Company at its option to treat the whole Contract as repudiated.
- 6.10** 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 Supplier's risk and shall be returnable at the Supplier's expense.
- 6.11** The Company shall not be deemed to have accepted the Goods until it has had 30 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 30 days after any latent defect in or incompatibility of the Goods has become apparent. Any Goods rejected by the Company shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.

7 Risk / Property

- 7.1** The Goods shall remain at the risk of the Supplier until delivery to the Company is complete (including off-loading and stacking) when ownership of the Goods shall pass to the Company. For the avoidance of doubt, the ownership of Goods which are hired by the Company shall remain with the Supplier.
- 7.2** The Supplier shall, throughout the Contract, maintain a policy of insurance which shall contain terms appropriate to provide adequate coverage for any and all risks, damage and loss contemplated in clause 7.1 above and which shall also be of an amount sufficient to provide adequate coverage for any and all such risks damage and/or loss. The Supplier shall, upon request by the Company, produce such policy of insurance to the Company for inspection.

8 Price

- 8.1** The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax but inclusive of all other charges.
- 8.2** No variation in the price nor extra charges shall be accepted by the Company.

9 Payment

- 9.1** The Company will pay the price of the Goods within 60 days of delivery of the Goods to the Company, (and/or, if the Contract requires the Supplier to provide services to the Company, payment for said services will be made pursuant to this Condition 9.1 within 60 days of completion of the performance of said services, as applicable) but time for payment shall not be of the essence of the Contract.
- 9.2** Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Supplier to the Company against any amount payable by the Company to the Supplier under the Contract.
- 9.3** If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over the base lending rate of Barclay's Bank plc from time to time. The Supplier is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding.

10 Confidentiality

10.1 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 the Company or its agents and any other confidential information concerning the Company's business or its products and/or services which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Supplier's obligations to the Company and shall ensure that such employees are subject to like obligations of confidentiality as bind the Supplier. Without limitation, the Supplier shall not without the prior consent of the Company in writing mention the Company's name in connection with the Contract in any publicity material or other similar communications to third parties.

11 The Company's Property

11.1 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 Supplier, or not so supplied but used by the Supplier specifically in the manufacture or supply of the Goods, shall at all times be and remain the exclusive property of the Company 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 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.

12 Termination

12.1 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 Supplier written notice, whereupon all work on the Contract shall be discontinued and the Company shall pay to the Supplier 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.

12.2 The Company shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith 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 its business; or
- (e) the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.

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

13 Remedies

13.1 Without prejudice to any other right or remedy which the Company 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 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 Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
- (c) at the Company'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.

14 Assignment

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

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

15 Force Majeure

- 15.1** 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.

16 General

- 16.1** 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.
- 16.2** 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.
- 16.3** 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.
- 16.4** Any waiver by the Company 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.
- 16.5** 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 principal place of business.
- 16.6** 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.
- 16.7** The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties.
- 16.8** Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application by either party to the President for the time being of the Law Society whose decision as to the type, qualifications and experience of such arbitrator shall be final and binding on the parties. The costs of the arbitrator shall be borne by the parties as he directs and his decision on the issue in dispute shall be final.
- 16.9** The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English & Welsh law and the parties submit to the exclusive jurisdiction of the English & Welsh courts.