

**BENJ<sup>N</sup>. R. VICKERS & SONS LIMITED**  
**TERMS AND CONDITIONS OF PURCHASE**

In these Conditions:

<b>"Confidential Information"</b>	means any and all communications and all information whether written, visual or oral and all other materials of a confidential nature supplied by one party to the other.
<b>"Goods"</b>	means the goods which are the subject of the Order including, without limitation, plant, machinery, equipment, vehicles and materials (including packaging), whether partly or wholly manufactured
<b>"Order"</b>	means the purchase order or orders placed by Vickers
<b>"Services"</b>	means any services to be provided to Vickers in connection with the Order
<b>"Supplier"</b>	means the person, firm or company to whom the Order is issued
<b>"Vickers"</b>	means Benjn. R. Vickers & Sons Limited or any group undertaking from time to time as defined in Sections 258 and 259 of the Companies Act 1985

**1. APPLICATION OF THESE CONDITIONS**

- 1.1 These conditions ("**Conditions**") shall apply in respect of all contracts ("**Contract**") made between Vickers and the Supplier for the purchases of Goods or Services from the Supplier. Vickers only enters into Contracts on the basis of these conditions which can only be altered or qualified by a document signed by a director of Vickers. As such these Conditions shall apply over and above any other condition advised by the Supplier, regardless of time of communication.
- 1.2 The performance of Services or delivery of Goods by the Supplier pursuant to the Order shall constitute acceptance of these conditions where acceptance has not previously been communicated to Vickers.
- 1.3 All references to INCOTERMS shall be INCOTERMS 2000.

**2. DELIVERY/ADVICE NOTES**

- 2.1 The Supplier shall comply in all respects with Vickers' programme for delivery of Goods and performance of Services and any reasonable request for information about progress against programme shall be provided by the Supplier without delay.
- 2.2 All Goods supplied against the Order shall be properly packed and secured by the Supplier in such a manner as to reach their destination in good condition and shall (unless otherwise directed by Vickers) be delivered by the Supplier carriage paid in accordance with Vickers' instructions, save for where Vickers arranges for collection of the Goods (which shall be stipulated in the Order by Vickers). All deliveries shall where possible bear Vickers' order number on each package, and all delivery papers shall always bear Vickers' order number.
- 2.3 Unless otherwise specified by Vickers in the Order, delivery shall be made at Vickers' premises during usual business hours (8:30 a.m. – 2:30 p.m., Monday to Friday excluding UK Bank Holidays). The Supplier shall comply with the Vickers "Booking In Instructions" which appear on the Order or are available separately. Failure to comply with these instructions may result in refusal of Delivery by Vickers which shall be without liability to Vickers. Re-delivery shall be at the Suppliers expense.
- 2.4 Delivery shall be completed when the Goods have been unloaded by the Supplier at the point of delivery and the delivery has been accepted by a duly authorised agent, employee or site representative of Vickers, save for where Vickers collects the Goods in which case delivery shall be completed when the Goods are loaded onto Vickers' vehicle.
- 2.5 If the Supplier is responsible for delivery or for arranging delivery of the Goods to Vickers' premises the Supplier will be liable for all damage which it or its carrier causes to Vickers' property in the course of delivery.
- 2.6 If Goods are delivered before the date specified in the Order, Vickers shall be entitled at its sole discretion to refuse to take delivery or to charge for insurance and storage of the Goods until the contractual date for delivery.
- 2.7 In the event of any strike, lock-out, fire, explosion or accident or of any stoppage of Vickers' business or work for reasons beyond its reasonable control which may prevent or hinder the use of the Goods or performance of the Services, delivery of the Goods or performance of the Services (or both), payment for them may be suspended or postponed at Vickers' option without any liability until such time as the circumstances preventing or hindering the use of the Goods or performance of the Services have ceased.
- 2.8 The Supplier shall be responsible for the packaging of and loading of the Goods where Vickers so specifies.
- 2.9 In the case of Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to Vickers as to the country of origin of the Goods and shall be liable to Vickers for any additional duties or taxes for which Vickers may be accountable should the country of origin prove to be different from that advised by the Supplier.
- 2.10 Other documentation such as certificates of analysis, material safety data sheets and technical or sales specifications may be requested by Vickers and must be supplied in a timely manner by the Supplier.
- 2.11 Where the Goods are being delivered in bulk, it is the Suppliers' representative or sub-contractor's responsibility to ensure that they are discharged in a safe and efficient manner. Any damage or loss caused by the Supplier's negligence in this regard shall be charged to the Supplier. No demurrage shall be chargeable to Vickers in the event that a delay in offloading is caused by the Supplier or their representatives.
- 2.12 Vickers shall only accept a margin of +/- 200kg of the Goods when delivering in bulk and shall not be asked to pay for anything above this amount.

### 3. TIME

- 3.1 Where time is specified such provision shall be of the essence of the Contract. Failure by the Supplier to adhere to any provision as to time contained in the Order shall entitle Vickers at its option to treat the Contract as repudiated in whole or in part. Vickers shall be entitled to exercise its option at any time notwithstanding that it has acquiesced in any delay unless a written extension of time has been given to the Supplier by a senior person of Vickers employ and the time of any extension has not elapsed.
- 3.2 Failure by Vickers to exercise its option under Condition 3.1 in respect of any part of an Order shall not be deemed to constitute a waiver with respect to any subsequent part of that Order.
- 3.3 Unless an extension of time has been agreed by Vickers in accordance with Condition 3.1, the Supplier's failure to effect delivery on the date or dates specified shall entitle Vickers to purchase substitute Goods and to hold the Supplier accountable for all loss or additional costs (or both) incurred as a result.

### 4. PRICE AND PAYMENT

- 4.1 Unless otherwise agreed by Vickers in writing:-
- 4.1.1 all prices are fixed inclusive of delivery, and are not subject to escalation, but are exclusive of VAT (if applicable) and any other applicable duties and taxes;
- 4.1.2 invoices shall not be rendered by the Supplier until completion of delivery of all of the Goods and performance of all of the Services which are the subject of the Order;
- 4.1.3 all invoices will be payable in pounds sterling;
- 4.1.4 prices will be fixed for the duration of the Contract and cannot be changed by the Supplier after acceptance of an Order; and
- 4.1.5 payment shall be due within 60 days following the month of receipt of the invoice or delivery, whichever is the later.
- 4.2 Vickers specifically reserves the right to set-off, withhold or deduct from any monies due or to become due to the Supplier any monies due to Vickers from the Supplier.
- 4.3 Vickers shall not be liable for any Orders or amendments to Orders other than those issued or confirmed by Vickers in writing.
- 4.4 Vickers shall not be responsible for the payment of any charges for Goods supplied or Services performed in excess of the Goods or Services required by the Order or any variation of it unless authorised in writing.
- 4.5 No payment of or on account of the Contract price shall constitute any admission by Vickers as to proper performance by the Supplier of its obligations.
- 4.6 No payment will be made for containers, crates or packing materials of any description except by special arrangement in writing.
- 4.7 Inattention to the following details may mean delay in payment but no prompt payment discount shall be forfeited by Vickers due to the failure of the Supplier:-
- 4.7.1 to send on the day of despatch for each consignment such advice(s) of despatch and invoice(s) as may be indicated on the Order; or
- 4.7.2 to send a monthly (or such other regular period as agreed between the Parties) statement of account quoting the invoice numbers applicable to each item caused by it; or
- 4.7.3 to comply with Condition 5.2; or
- 4.7.4 to mark clearly where possible the date of manufacture, best before date, supplier log or batch number or article number, on each consignment or package provided.

### 5. PACKAGING

- 5.1 Vickers shall only be responsible for returning cases or other durable packaging to the Supplier if such responsibility is accepted by Vickers in the Order. Return of any packaging will be at the Supplier's cost.
- 5.2 The Supplier shall mark clearly where possible Vickers' order number on each consignment package, pallet, packing notes, advice notes, invoices, statements provided in accordance with Condition 4.7.2 and all other correspondence relating to them, notwithstanding that Vickers' order number should always be displayed on all delivery papers.
- 5.3 The Supplier shall mark clearly where possible the date of manufacture, best before date, supplier log or batch number or article number, on each consignment or package provided.
- 5.4 The Supplier will comply with Vickers' reasonable requirements in relation to the packaging and packing of the Goods. Notwithstanding this, all packaging shall be fit for purpose.

### 6. COLLECTION NOTES

- 6.1 The Supplier shall notify Vickers when the Goods are available for collection by Vickers.
- 6.2 The Supplier shall provide Vickers with a duly signed collection note ("**Collection Note**") in a form agreed by Vickers, acknowledging that Vickers has collected the Goods.
- 6.3 If Vickers arranges for collection of the Goods and the Goods are not packaged satisfactorily or the Goods are unfit in any way for collection, the Supplier, if requested to do so by Vickers, shall be responsible for the costs of ensuring that the Goods are made fit for collection.
- 6.4 The Supplier shall arrange for the Goods to be loaded onto Vickers' vehicle.

### 7. RISK AND TITLE

- 7.1 Unless otherwise stated on the Order, risk in the Goods purchased shall pass to Vickers upon completion of delivery as specified in Condition 2.3 and title to the Goods or any part of the Goods shall pass upon the earlier of delivery or the time of any payment being made for them. The Supplier shall be responsible for transport and

unloading costs and insurance of Goods to their full value against all risk of damage or loss prior to completion of delivery.

## 8. QUALITY AND GUARANTEE

- 8.1 Any inspector or representative authorised by Vickers shall be entitled to inspect the Goods or, as the case may be, any Services being performed at any reasonable time either at the Supplier's works or at the works of any sub-contractor and to require all defects or deficiencies to be made good and alterations made in the event of any failure in the opinion of Vickers to comply with the terms of the Order, provided nevertheless that such inspection or right to inspect shall not of itself constitute acceptance or approval of all or any part of the Goods.
- 8.2 Goods shall be of satisfactory quality, fit for purpose and shall be supplied strictly in accordance with the quantities, specifications, standards and stipulations contained in or annexed to the Order and, unless otherwise agreed in writing, shall conform to all relevant UK and EC standards, specifications and conditions and all work and Services performed by the Supplier shall be in accordance with best practice and pass such inspection as may be required by Vickers, its customers or their agents or any government department concerned.
- 8.3 Any Goods supplied under the Contract will (unless agreed otherwise) include all relevant documentation, certification and commissioning to enable Vickers to use the Goods for Vickers' intended purpose.
- 8.4 Any Services performed by the Supplier under the Contract will include any employee instruction, manuals, explanations or certifications necessary to enable Vickers to use and/or benefit from the Services in accordance with Vickers' intended purposes.
- 8.5 The Supplier shall not make any change to the specification for the Goods nor change any raw material or production methods used in the production of the Goods without the prior written consent of Vickers.
- 8.6 The Supplier warrants that any Services will be performed by appropriately trained and qualified personnel.
- 8.7 Nothing contained in these conditions shall in any way detract from the Supplier's obligations under common law or statute or any express warranty or condition contained in the Order.
- 8.8 Notwithstanding that:-
- 8.8.1 Vickers has accepted all or part of the Goods; or
- 8.8.2 where the Contract is for the sale of specific goods, the title in the Goods has passed to Vickers;
- the breach by the Supplier of any express or implied condition to be fulfilled by it may (subject to Condition 8.10) be treated as a ground for rejecting the Goods and treating the Contract as repudiated.
- 8.9 Vickers shall be entitled to require the Supplier to perform the obligations contained in Condition 8.10 or, at its option, reject the Goods and treat the Contract as repudiated at any time prior to the expiration of the following periods:-
- 8.9.1 where the defect is apparent on a visual inspection, one month after delivery to Vickers; or
- 8.9.2 in any other case one month after Vickers has discovered the defect in question.
- 8.10 Without prejudice to Vickers' right to treat the Contract as repudiated, where Vickers notifies the Supplier of any defective or damaged or contaminated Goods (whether due to defective design, materials or workmanship or otherwise) or faulty workmanship in the provision of the Services, the Supplier shall be responsible for making good with all possible speed the defective or damaged Goods or faulty workmanship (fair wear and tear excepted) and the Supplier shall indemnify Vickers for any expenses Vickers incurs arising as a result of the defective or damaged or contaminated Goods.

## 9. HEALTH AND SAFETY

- 9.1 The Supplier warrants that in the supply of the Goods and/or Services and the provision of information relating to them it will comply with the duties imposed on it by the Health and Safety at Work etc. Act 1974 or any amendment thereto or re-enactment thereof and of all other statutory provisions, bye-laws, rules and regulations so far as they are applicable to the Goods and/or Services and that it will perform the Contract such that no liability is incurred by Vickers under such statutory provisions, bye-laws, rules and regulations; and
- 9.2 Notwithstanding Condition 9.1, if during the performance of the Services and/or supply of Goods the Supplier has need to enter Vickers' premises then the Supplier and the Supplier's employees, agents and/or subcontractors will comply with Vickers' requirements including (but not limited to) in relation to security, health and safety and times and areas of access.

## 10. INDEMNITY

- 10.1 The Supplier agrees to indemnify Vickers against:-
- 10.1.1 all losses, costs, damages, expenses and claims including product recalls (and implementation thereof) caused to and made against Vickers which would not have been caused or made had the Supplier fulfilled its express or implied obligations under this Contract;
- 10.1.2 all claims arising out of errors and omissions in packaging supplied by the Supplier; and
- 10.1.3 all claims made against Vickers arising out of the acts, omissions or negligence of the Supplier, its employees, agents or its sub-contractors.

## 11. CONFIDENTIALITY

- 11.1 Each party shall at all times keep all Confidential Information supplied by the other party confidential and will not disclose any such information to any third party other than in the proper performance of its obligations under this Contract. Each party agrees that this obligation shall continue in force without limit in point of time.
- 11.2 The restriction imposed by Clause 11.1 shall not apply to the disclosure of any Confidential Information:
- 11.2.1 to such extent as is necessary for the purposes contemplated by these Conditions and with the other party's prior consent; or

- 11.2.2 as is required by law; or
- 11.2.3 where it is public knowledge at the date of disclosure or can be shown by the disclosing party to have been known prior to such disclosure, provided that such disclosure does not constitute a breach of these Conditions.

11.3 If the Seller and the Buyer have entered into a separate Confidentiality Agreement, in the event of a conflict between the terms of such Confidentiality Agreement and the terms of this Clause 11, the terms of the Confidentiality Agreement shall prevail.

## 12. INTELLECTUAL PROPERTY RIGHTS

12.1 The Supplier acknowledges and agrees that all patents, copyright, moral rights, business and trade names, trademarks (registered or unregistered), design rights (registered or unregistered), know-how and any and all other intellectual property rights in the plans, design drawings, computer programs, compilations of data, specifications and any documentation supplied by Vickers to the Supplier together with any enhancements or improvements are retained by Vickers. The Supplier shall have no rights in respect of any intellectual property rights belonging to Vickers nor any goodwill associated therein.

12.2 The Supplier warrants that the use by Vickers of any Goods and/or Services will not infringe the intellectual property rights of any third party.

12.3 Any intellectual property rights in any Goods and/or Services created or delivered specifically for Vickers will be owned by Vickers.

12.4 Subject to Condition 12.5 below, the Supplier shall transfer to Vickers with full title guarantee the ownership of any rights necessary for Vickers to use and enjoy the Goods and/or Services.

12.5 Where the Supplier is prohibited from complying with Condition 12.4 due to the existence of third party rights the Supplier shall procure for the benefit of Vickers a (non-exclusive, assignable, royalty free) licence of any rights necessary for Vickers to use and enjoy the Goods and/or Services.

## 13. MARKING OF GOODS AND PUBLICITY

13.1 No publicity of any kind may be undertaken by the supplier in respect to the Order or the Goods and Services supplied to Vickers without the express written permission of a director of Vickers.

## 14. SUBCONTRACTING

14.1 The Supplier may not assign or sub-contract any of its obligations under the Contract without the prior written consent of Vickers.

14.2 The Supplier shall be responsible for the acts and/or omissions of any sub-contractors used to provide the Goods and/or Services as if they were themselves responsible for such acts and/or omissions.

## 15. INSURANCE

15.1 The Supplier will hold sufficient insurance to cover their potential liabilities under any Contract with Vickers and the Supplier will make such policies of insurance available to Vickers on request.

## 16. TERMINATION

16.1 Without prejudice to any other rights or remedies to which it may be entitled, Vickers may terminate the Order and/or any contracts with the Supplier forthwith and without liability in the event that:-

16.1.1 the Supplier applies to the court for an interim order under the Insolvency Act 1986 or (being an individual or partnership) makes a proposal for an individual voluntary arrangement under that legislation; or

16.1.2 the Supplier (being a company):

(a) goes into company or voluntary liquidation or passes a resolution for voluntary winding up or its directors convene a meeting of shareholders for that purpose; or

(b) has an administrative receiver or receiver appointed over all or any part of its assets or undertaking; or

(c) distress or execution being levied against any of the Buyer's assets or if a judgment against the Buyer remains unsatisfied for more than seven (7) days; or

(d) has any action, step, legal proceedings or other procedure taken in respect of it by its directors, shareholders, bankers, creditors or any person seeking to appoint a liquidator or an administrator or takes any such act or step itself; or

(e) has proposed in respect of it a company voluntary arrangement pursuant to the Insolvency Act 1986; or

(f) ceases or threatens to cease to carry on business; or

(g) if the Supplier in the reasonable opinion of Vickers is unable to pay its creditors as and when its debt fall due or is otherwise insolvent as defined in the Insolvency Act 1986; or

16.1.3 the Supplier is in material breach of its obligations under the Contract.

## 17. VALUE ADDED TAX

If the Supplier is registered for value added tax, the Supplier shall issue a proper tax invoice in accordance with the relevant legislation before Vickers shall be required to make payment for Goods or Services supplied.

## 18. CONSUMER PROTECTION ACT 1987 (THE "ACT")

18.1 The Supplier warrants that all Goods supplied to Vickers together with all necessary instructions, information and warnings supplied with them will be designed, manufactured and produced in such a manner as to ensure that under no circumstances could the Goods be held to be defective pursuant to Part 1 of the Act.

- 18.2 If the Supplier becomes aware at any time of any incidents, events or discoveries which are in any way relevant to the safe operation of Goods previously supplied, the Supplier shall without delay issue written notice of them to Vickers.
- 18.3 The Supplier shall indemnify, reimburse and compensate Vickers for all losses and damages (including costs, expenses and charges for legal action in which Vickers may be involved) which Vickers may incur or have to bear as a result of any claim or claims arising as a result of the Goods being adjudged defective pursuant to the provisions of Part 1 of the Act.
- 18.4 The Supplier undertakes to maintain adequate insurance cover (with insurers of repute) in respect of liability pursuant to the Act and to produce to Vickers without delay upon request a copy or copies of the relevant policy or policies of insurance.

#### 19. **VARIATION**

- 19.1 Any amendments to the Order shall be made by agreement evidenced in writing by both parties.
- 19.2 The Supplier shall advise Vickers immediately if such amendments either prevent the specified delivery date(s) being met or have any other significant implication regarding the Supplier's obligations to Vickers.

#### 20. **CANCELLATION**

Without prejudice to any other specific provision of this Contract or any other right available to it, Vickers shall have the right to cancel the Contract in whole or in part at any time by giving written notice to the Supplier whereupon all work under the Order (or the cancelled part) shall be discontinued and Vickers shall pay to the Supplier such proportion of the Order price as may be fair and reasonable having regard to the value of work done, of the Goods previously delivered and of Services performed under the Order (including an element of profit to be calculated on a pro rata basis by reference to the net profit margin on the contract as a whole which the Supplier can evidence to the satisfaction of Vickers it would have obtained had the proceeded to completion) and on such payment no further sum or sums shall be due by way of damages, loss of profits or otherwise from Vickers to the Supplier by reason of such cancellation.

#### 21. **FORCE MAJEURE**

- 21.1 If either Vickers or the Supplier is delayed or hindered in the performance of its obligations by circumstances beyond its reasonable control (including any form of government intervention or strikes and lock outs not involving the parties hereto or their respective work forces) then delivery of the Goods or performance of the Services shall be suspended and if such delivery cannot be effected within a reasonable time after the due date the delivery may be cancelled by either party in writing to the other without liability on either side.
- 21.2 A delivery which is not cancelled will be made or accepted as soon as the circumstances causing the delay or hindrance cease. When more than one delivery is to be made against the Order, the period during which deliveries are to be made shall be amended by agreement between the Parties.

#### 22. **ENGLISH LAW**

The parties agree that any disputes arising or in any way connected with the subject matter of these Conditions (whether of a contractual or tortious nature or otherwise) shall be subject to the laws of England and shall be subject to the jurisdiction of the English courts only except that Vickers may seek injunctive relief outside such jurisdiction.

#### 23. **THIRD PARTY RIGHTS**

A person who is not a party to the Contract (a "third party") shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any of these Conditions. Any right or remedy of a third party which exists or is available apart from the Act is not affected.