

# Conditions of Purchase Order

(IN WHICH BORRAS CONSTRUCTION LIMITED ARE REFERRED TO AS "THE PURCHASER")



## 1) Acceptance of Order

Unless otherwise agreed in writing by the Purchaser these items and conditions shall govern any agreement concluded in pursuance of this Order and shall over-ride any terms or conditions specified or referred to by the Seller (whether verbally or in writing and whether set out in the Seller's Quotations or invoices or otherwise).

## 2) Property

The property and the goods covered by this order shall pass to the Purchaser on delivery but such passing shall not affect the Purchaser's right to reject any such goods in accordance with the provisions of these conditions or otherwise.

## 3) Price

Except as may be otherwise provided in this Order the price specified in this Order shall include all charges for taxes of any kind transportation delivery packaging crating and returnable containers. Should the rate of any tax applicable to this Order be altered, the price shall be adjusted accordingly but such price shall not be increased for any other reason without the consent in writing of the Purchaser.

## 4) Payment

No claim for payment shall be valid unless supported by an Official Purchase Order (indicated clearly on the Seller's Invoices) and related Delivery Note signed by the Purchaser.

## 5) Delivery

- Delivery shall be affected in accordance with the Purchaser's requirements as set out on this order as otherwise notified in writing by the Purchaser to the Seller and by the cheapest method freight prepaid.
- The Purchaser shall not be obliged to accept deliveries prior to the date specified in this Order unless such advance delivery or otherwise has been authorised in writing by the Purchaser. If delivery cannot be made within the time specified by the Purchaser the Seller shall notify the Purchaser immediately. If the Seller fails to deliver any or all of the goods covered by this Order within the time agreed the Purchaser shall have the right to purchase equivalent goods elsewhere and to charge the Seller with any loss resulting therefrom or at the Purchaser's option to cancel this Order insofar as it relates to any goods not delivered and the Purchaser shall not be obliged to accept or pay for the same compensate the Seller for any expenses which the Seller may have incurred. For the purposes of this clause time shall be deemed to be the essence of the contract.
- The Purchaser shall not be obliged to accept quantities in excess of those stated in this Purchase order and any goods delivered in excess of those specified may be held by the Purchaser at the risk and expense of the Seller.

## 6) Warranties: Purchaser's Rights to Reject

- In additions to and without prejudice to all other warranties and conditions expressed or implied by law the Seller warrants to the Purchaser that all goods covered by this Order will conform to the specifications drawings or other descriptions furnished or agreed by the Purchaser and that such goods will be free from all defects in materials and workmanship. All warranties both express and implied shall constitute conditions and shall survive inspection acceptance and payment by the Purchaser.
- Without prejudice to any rights at law resulting from any breach of warranties or otherwise goods which are not as warranted may at any time within 6 months after delivery be rejected by the Purchaser or at the option of the Purchaser be returned to the Seller at the Seller's expense for credit correction or replacement as the Purchaser may require. The Purchaser at the Seller's risk and expense will hold any goods rejected by the Purchaser and any payment on account thereof will be promptly refunded by the Seller.

## 7) Acceptance

The Purchaser shall not be deemed to have accepted any goods until inspected and approved by the Purchaser after delivery at the destination specified by the Purchaser in particular signature of the Seller's Delivery Docket or Receipt Form by the Purchaser shall not constitute acceptance of the goods by the Purchaser.

## 8) Indemnity

- The Seller shall indemnify and save harmless the Purchaser from all claims liabilities suits and actions which may be made or brought against it by virtue of any claims or demands which any buyer of such goods from the Purchaser or at other person may make against the Purchaser arising from the use of such goods (whether along or admixed with other goods) or from any patent or defect in the quality of such goods or from the dangerous conditions thereof and shall repay the amount paid by the Purchaser to settle any such claims for liabilities and shall pay any judgement rendered against the Purchaser in any such action or suit and shall reimburse the Purchaser for all costs legal fees and other expenses incurred by it in the defence of any such action or suit.
- The Seller agrees that in case any goods sold to the Purchaser hereunder shall infringe any patent or copyright the Seller will indemnify and save harmless the Purchaser from and against all suits claims judgements decrees and costs of any kind made or recovered against the Purchaser by any person on account of the use or sale of such goods by the Purchaser in violation or any right claimed under any such patent or copyright and in the event of any infringement action in respect of such goods being instituted against the Purchaser the Seller agrees to repurchase from the Purchaser at the price paid thereof any such goods then unsold.
- The Seller shall indemnify the Purchaser against all claims costs and demands made under any statutory provisions or at Common Law in respect of personal injury to any of the Seller's servants or agents or in respect of any claims by any third party in connection with the performance of this Order howsoever arriving.
- The Seller shall indemnify the Purchaser against any costs expenses or losses incurred by the Purchaser arising from the breach or failure of the Seller to observe the provision of this order.

## 9) Alteration or Cancellation

The Purchaser shall have the right at any time to make changes in specifications relating to this Order. If such changes cause an increase or decrease in the amount due under this Order or in the time required for its performance an equitable adjustment shall be made by mutual agreement between the parties hereto.

## 10) Price Control

The Seller warrants that the prices to be paid in pursuance of this Order are not in excess of the prices authorised by any price regulation in effect and applicable hereto. If any of it is subsequently determined that such price is in excess of the price so authorised the Seller shall refund such excess to the Purchaser.

## 11) Standards

The Seller warrants that all goods supplied in pursuance of this Order shall conform to the appropriate U.K. standards specification or others as may be stated on this order form.

## 12) Set-Off

The Purchaser shall be entitled to deduct from any moneys due to the Seller in pursuance of this Order any sums owed by the Seller to the Purchaser on any account whatsoever.

## 13) Cancellation in Certain Circumstances

The Purchaser shall be entitled to cancel this Order in whole or in part without any liability whatsoever in the following circumstances

- If an order is made or an effective resolution passed for the winding up of the Seller
- In the event of the appointment of a Receiver over the whole or any part of the assets of the Seller or if distress or execution is levied upon or against any of the property of the Seller.
- In the event of the Seller making any composition or assignment for the benefit of creditors.

## 14) No Sub-contracting

This Order shall not be sub-contracted assigned or transferred without the prior written consent of the Purchaser.

## 15) Validity of this Order

This Order shall be valid only if signed by an authorised executive of the Purchaser and no alteration or modification of this Order shall be valid unless given in writing and signed.

## 16) No Waiver of Other Rights

The Purchaser's rights and remedies contained in these conditions are cumulative and additional to any other or further rights and remedies at law or in equity. No waiver or breach of any provision hereof shall constitute waiver of any other breach.

## 17) Severability

If for any reason any provision of this Order shall be void or of no effect the other provisions hereof shall not be affected thereby and shall continue in full force and effect.

## 18) Proper Law

The provisions of this Order shall be governed by and construed in accordance with the laws of England.

## 19) Hire Order

Where the Purchase Order is endorsed on the face 'HIRE ORDER'

- The goods are the items hired
- The Seller is the owner of the items hired
- Condition 2 will not apply
- At the termination of hire the goods shall be in as good a condition as they were at the commencement of hire fair wear and tear excepted.

## 20) Data Protection:

The parties acknowledge that for the purposes of the Data Protection Legislation that the Purchaser is the Data Controller and the Seller is the Processor.

The Seller shall therefore:

- only act on the written instructions of the controller;
- ensure that people processing the data are subject to a duty of confidence;
- take appropriate measures to ensure the security of any processing; only engage sub-processors with the prior consent of the controller and under a written contract;
- assist the controller in providing subject access and allowing data subjects to exercise their rights under the GDPR;
- assist the controller in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments;
- delete or return all personal data to the controller as requested at the end of the contract; and
- submit to audits and inspections, provide the controller with whatever information it needs to ensure that they are both meeting their Article 28 obligations, and tell the controller immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state.