

Terms for the Purchase of Goods and Services by Omega Red Group Ltd. "The Purchaser"

Terms and Conditions of Purchase and Sub-Contract

The following conditions shall apply to all Contracts entered into by or on behalf of Omega Red Group Ltd or its Trading Divisions (hereinafter called "the Purchaser") for the Purchase of Goods and Sub-Contract Services.

1. Definitions

In these conditions the following expressions shall have the meanings indicated adjacent to each: -

"The Purchaser" shall mean Omega Red Group Limited

"The Supplier/Sub-Contractor" shall mean the Company, person or firm to which the Purchase Order is addressed.

"Supplies" shall mean the supply only of equipment.

"The Order" shall mean the order and any revisions or amendments thereto placed/issued by the Purchaser for the supply of goods and/or services.

"The Specification" shall mean the description given in any enquiry document and/or referred to in the order.

2. General

- (1) Only orders on an official Purchase Order form shall be binding on the Purchaser and the Supplier/Sub-Contractor hereby acknowledges that acceptance of Purchase Order implies acceptance of these Terms and Conditions of Purchase and Sub-Contract and any variations or amendments thereto will only be binding if agreed between the Purchaser and Supplier/Sub-Contractor in writing.
- (2) Unless specified to the contrary in writing, all orders placed by the Company are on a fixed price basis and no variation in the price will be accepted, unless reasonable written notice has been given to the Purchaser of such a variation and the Purchaser's written approval has been obtained thereto prior to execution.

3. Quality/Damaged - Defective Goods and/or Workmanship

- (1) All goods/services supplied/undertaken shall be in every respect equal to descriptions, programmes, specifications or the like forming part of our enquiry and fit for the purpose intended or to be reasonably implied from the provisions of our enquiry documents and Purchase Order. Any goods or services provided which are not in accordance with the descriptions or specifications of our enquiry and/or Purchase Order may be rejected in part or in whole at any time prior to us accepting same. After our acceptance of the goods/services the Supplier/Sub-Contractor hereby accepts that he will at our option and at his cost make good or replace any item of defective equipment that may occur within 12 months of acceptance and furthermore, warrants to indemnify the Purchaser against any liability incurred as a consequence of any act or omission of the Supplier/Sub-Contractor or his agent in the performance of the contract. Any expense suffered by the Purchaser due to the above or any failings of the Supplier/Sub-Contractor may be withheld/deducted/set off from any monies due or becoming due to the Supplier/Sub-Contractor after first notifying the Company's intention to withhold, deduct or set off from monies due or becoming due together with the reasons therefore not later than five days after the date on which a payment becomes due or would have become due under this sub-contract.

4. Packing

- (1) All goods must be supplied securely packed so as to reach the Purchaser in a good and undamaged state. Such packaging, insurance, unloading and delivery is deemed to be included within the Suppliers/Sub-Contractors tender sum/sub-contract sum.

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- (2) In the case of materials being forwarded to a point after they have been delivered having to be transhipped unloaded or otherwise handled by the Purchasers employees or agents, the cost of unloading transhipping or handling will be charged to the Supplier/Sub-Contractor if initially delivered to a point other than that described within the purchase order.

5. Delivery/Penalties

- (1) The Supplier/Sub-Contractor shall arrive at the time specified in the order. If the goods or any portion thereof are not delivered within the time or times specified in the contract or any extension thereof the Purchaser shall be entitled to determine the contract in respect of goods and deliveries as aforesaid and of any goods already delivered under the contract which cannot be effectively and commercially used by reason of normal delivery of the goods undelivered as aforesaid without prejudice to the Company's right of action to recover the costs of alternative supply and consequential loss.
- (2) All deliveries must be accompanied by a fully detailed delivery note suitably secured to the goods to which they refer.

6. Cancellation

- (1) The Purchaser reserves the right to cancel the Purchase Order if delivery/executioner parts thereof are not made by/on stipulated dates at any time without liability. The Supplier/Sub-Contractor undertakes to notify the Purchaser in writing within 14 days after the date of the Purchase Order of his acceptance of dates and other terms and stipulations of our order, this acceptance is deemed to unconditionally agree with the Purchasers Terms and Conditions of Purchase and Sub Contract. The Purchaser shall not be liable for any loss to the Supplier or Sub-Contractor including consequential loss.
- (2) In the event of the Purchasers contract with its employer being cancelled, delayed, interrupted or otherwise restricted by force majeure, lock-out, strikes or workmen or other cause whatsoever beyond the control of the Purchaser, the Purchaser shall be at liberty to defer the days of delivery or cancel the order.
- (3) Under such circumstances, the Purchaser shall be under no obligation to the Supplier or Sub-Contractor to take any further deliveries in part or whole and shall not be liable for any loss to the Supplier or Sub-Contractor including consequential loss.

7. Payment/Retention

- (1) All invoices must bear the Purchasers Order No. and must be rendered in duplicate to the Purchasers Office address as shown at the base of the Purchase Order.
- (2) In relation to the supply of goods, the Purchaser shall pay to the Supplier the sums stated on the Purchase Order in accordance with the terms of payment thereon. If no payment terms are stated on the Purchase Order, payment will be made sixty days from the end of the month in which the invoice is submitted, or the last date of delivery takes place, whichever is the latter.

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- (3) In the event of any dispute or difference between the Purchaser and Supplier/Sub-Contractor whether arising during the execution or after the completion or abandonment of the sub-contract works or after the determination of the employment of the Supplier/Sub-Contractor herein regard to any matter howsoever arising out of the order or in connection therewith which shall be substantially the same as a matter which is a dispute or difference between the Purchaser and his client the Purchaser shall be entitled to require the Supplier/Sub-Contractor to be joined as a party to such Arbitration. The Supplier/Sub-Contractor hereby agrees to be so joined and that such dispute or difference with the Purchaser shall be referred to the Arbitrator appointed pursuant to the provisions of the contract between the Purchaser and his Client.
- (4) In relation to Sub-Contract work/goods or services: -
- (5) During the regular progress of the Sub-Contract, the Sub-Contractor shall be entitled to be paid 95% of the value of Sub-Contract work/goods/services properly executed to the satisfaction of the Purchaser, less any discount applicable.
- (6) The Sub-Contractor shall submit to the Purchaser, not less than five days before the date on which the Purchaser is required to submit same to his client, a written statement of work properly executed, identifying details of work carried out to support the Sub-Contractor's valuation. The Sub-Contractor's statement shall be in such form and contain such details as the Purchaser may reasonably require.
- (7) Forty (40) days after the date the Purchaser is required to submit statements to his client, a sum calculated in accordance with any applicable rates/quantities ordered by the Purchaser shall be due to the Sub-Contractor for works properly executed and certified under the head contract between the Purchaser and his client. The Purchaser shall notify the Sub-Contractor in writing of the amount so calculated and certified within forty days of the date when the Purchaser submitted his statement to his client. The final date for payment shall be thirty days after the date when payment becomes due.
- (8) The Purchaser shall be entitled to omit from any calculation of the value of work done, the value of any work done, goods or materials supplied or services rendered with which he may for the present time be dissatisfied and for that purpose or for any other reason which to the Purchaser may seem proper, may delete, correct or modify any sum previously determined by him as due for payment to the Sub-Contractor.
- (9) Where as a result of ordering varied work the Purchaser is of the reasonable opinion that an increased or decreased payment will become due, the Purchaser shall decide the amount to be added/subtracted from any sum to be paid to the Sub-Contractor under the preceding paragraphs of this clause 7.
- (10) Without prejudice to any rights at common law, the Purchaser shall be entitled to withhold payment otherwise due pursuant to the provisions hereof and shall have no liability to make payment to the Sub-Contractor to the extent that the value of work properly done by the Sub-Contractor has been certified under the principal contract but the Client thereunder is insolvent and has failed to make payment to the Purchaser in respect of such work properly done by the Sub-Contractor.

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(11)

In the event of the Purchaser withholding any payment after any final date for payment hereunder, he shall notify the Sub-Contractor of his reasons in writing not less than one day before the final date for payment specifying the amount proposed to be withheld and the ground for withholding payment or if there is more than one ground, each ground and the amount attributable to it.

(12)

Where under the principal contract a certificate of making good defects has been issued, then under the Sub-Contract within 28 days there shall be due to the Sub-Contractor the retention monies. The Purchaser shall so notify the Sub-Contractor in writing within the same 28-day period. The final date for payment shall be fourteen days later.

8. Adjudication

(1) The Purchaser and the Sub-Contractor each has the right to refer any dispute under the Sub-Contract for adjudication in accordance with the following provisions.

- (1) Either party may at any time give notice in writing (hereinafter called the Notice of Adjudication) to the other of his intention to refer the dispute to adjudication.
- (2) The Notice of Adjudication and the appointment of the adjudicator shall, save where the adjudicator is named in the Sub-Contract, be referred to the RICS who will nominate an adjudicator.

(2) The decision of the adjudicator shall be binding until the dispute is finally determined by legal proceedings or by arbitration (if the Sub-Contract provides for arbitration or the parties otherwise agree to arbitration).

9. Insurance and Indemnity

(1) The Supplier/Sub-Contractor shall ensure that he is adequately insured with a reputable Insurance Company in accordance with any current compulsory Insurance Acts to cover any liability towards his employees, and against loss, damage to property (his own or other persons) and death or injury to any other person/s occasioned by the Suppliers/Sub-Contractors defective workmanship, materials or design or by his negligence or breach of any Statutory Act or Regulation.

10. Indemnities

- (1) The Supplier/Sub-Contractor will indemnify the Purchaser against the following: -
- (2) Loss or damage or injury whatsoever and whensoever caused to the Purchaser or for which the Purchaser may be liable to third parties due to defective workmanship or unsound quality of the goods as supplied. b) Claims in respect of death or injury howsoever caused to any of the employees of the Purchaser's principals or Suppliers/Sub-Contractors or Purchaser while in or about the Purchaser's sites or works or the place of business.

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- (3) Consequential loss or damage to which the Purchaser may be liable as a result of the failure of the Supplier/Sub-Contractor to perform the work or supply the materials in accordance with the terms of the Order.

11. Risk and Property

The Supplier/Sub-Contractor shall deliver goods to the place stated on the official order and any risk of or damage to the goods caused by whatever means shall not pass to the Purchaser until they have reached the stated destination. Upon delivery to the destination the property in the goods shall pass to the Purchaser.

12. Restriction on Sale/Patent

The Supplier/Sub-Contractor warrants that he will not sell goods to any other person that have been designed by and manufactured by the Supplier/Sub-Contractor his agents or servants in accordance with drawings and/or specifications or pattern supplied or paid for by the Purchaser unless prior permission is obtained from the Purchaser in writing. Any drawings/specifications, patterns tooling, or free issue materials paid for by the Purchaser shall remain the property of the Purchaser at all times and shall be returned to the Purchaser upon demand. The Supplier/Sub-Contractor furthermore warrants that any goods supplied to the Purchaser will not violate any UK or foreign registered design, patent trade mark or the like and to indemnify the Purchaser against any actions or costs arising as a result of any actual or alleged violations and undertakes to assist in any necessary defence of any action brought against the Purchaser in respect of such violations.

13. Inspection

The Purchaser reserves the right to inspect goods or services at any stage of manufacture or installation and to duly reject or demand remedial action be taken to rectify any defective goods or services at the Suppliers/Sub-Contractors cost.

14. Sub-Contracts/Letting

No part of the contract for goods or services shall be sub-let without the Purchasers written approval and any such sub-let contract shall be under the Purchase Order terms and conditions or under any such terms and conditions as imposed by the Purchasers own Client as the case may be.

15. Amendment to Drawings/Specifications/Patterns

All goods supplied must comply with any British Standard governing such item currently in force in addition to complying with the Purchase Order and any drawings, specification or patterns supplied, no amendment to the aforesaid may be made without prior written approval from the Purchaser.

16. Incorporation of Main Contract Terms

The terms and conditions of main contract, sub or sub-sub contract as the case may be as held by the Purchaser shall be deemed to be incorporated herein, with the exception of any

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third-party rights under the Contracts (Rights of Third Parties) Act 1999, any such rights are expressly excluded from this Contract unless agreed to the contrary by the Purchaser in writing. These can be viewed at the Purchasers Offices by prior arrangement. 17.
Warranties and Guarantees

The Supplier/Sub-Contractor in respect of any goods and/or services provided to the Purchaser shall provide a warranty or guarantee in terms as provided in the contract, sub or sub-sub contract and any defects liability period stated therein shall apply to the Supplier/Sub-Contractor for the same duration and at the same time as to the Purchaser.

18. Programme of Works

Where the Purchase Order is in respect of services, the Supplier/Sub-Contractor shall agree with the Purchaser a suitable programme of works including any critical dates as may be necessary and the Supplier/Sub-Contractor shall then adhere to such programme unless instructed otherwise by the Purchaser. Any expense suffered by the Purchaser due to non-conformance to any such programme by the Supplier/Sub-Contractor may be deducted from any monies due or becoming due to the Supplier/Sub-Contractor.

The Purchaser may at any time amend or suspend the Programme without any liability to the Sub-Contractor.

19. Publicity

Any matter relating to the contract shall be dealt with through the Purchaser and any details relating thereto shall be treated as confidential and shall not be disclosed to any third party or used as publicity material unless prior written permission has been gained by the Supplier/Sub-Contractor from the Purchaser.

20. Bankruptcy

If the Supplier/Sub-Contractor shall become bankrupt or insolvent or be issued with any receiving order, the Purchaser may determine the contract forthwith by written notice to the Supplier/Sub-Contractor or Liquidator/Receiver on his behalf and any associated costs that the Purchaser incurs will be deducted from any monies properly due to the Supplier/Sub-Contractor under The Contract.

Should there be areas of conflict or variation between the Purchase Order Conditions and any conditions contained within the Suppliers/Sub-Contractors tender or acceptance then any works commenced or goods supplied as instructed on the Purchase Order shall construe the Suppliers/Sub-Contractors acceptance of all the terms and conditions stated hereon. Any term or condition wishing to be imposed by the Supplier/Sub-Contractor shall only have effect if accepted in writing by the Purchaser.

22. Applicable Law

For contracts formed in England these conditions shall be governed by English Law and the Supplier/Sub-Contractor hereby submits to the jurisdiction of the English Courts.

For contracts formed in Scotland these conditions shall be governed by Scottish Law and the Supplier/Sub Contractor hereby submits to the Jurisdiction of the Scottish Courts.