

# FENNER PLC GENERAL CONDITIONS OF PURCHASE (4<sup>TH</sup> EDITION)

## 1. INTERPRETATION

1.1 In these Conditions the following words shall have the following meanings:

<b>Buyer</b>	the company in the Buyer's Group identified overleaf as Buyer.
<b>Buyer's Group</b>	Fenner PLC and all subsidiary companies (as defined by Section 1159 of the Companies Act 2006) from time to time of Fenner PLC.
<b>Conditions</b>	the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between Buyer and Supplier.
<b>Contract</b>	the Order and Supplier's acceptance of the Order.
<b>Goods</b>	any goods agreed in the Contract to be purchased by Buyer from Supplier (including any part or parts of the Goods).
<b>Order</b>	Buyer's written instruction to supply the Goods and/or perform the Services, incorporating these Conditions.
<b>Services</b>	any services agreed in the Contract to be purchased by Buyer from Supplier (including any part of the Services).
<b>Supplier</b>	the person, firm or company identified overleaf as Supplier.

1.2 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. APPLICATION OF CONDITIONS

2.1 These Conditions shall govern the Contract to the exclusion of any terms or conditions endorsed upon, delivered with or contained in Supplier's quotation, acknowledgement or acceptance of order or similar document and Supplier waives any right which it otherwise might have to rely on such terms or conditions.

2.2 These Conditions shall cancel and supersede any earlier version or edition of Conditions of Purchase of Buyer.

2.3 No variation to the Order or these Conditions shall be binding on Buyer unless agreed in writing and signed by a duly authorised representative of Buyer.

## 3. ORDERS

3.1 The Order constitutes an offer by Buyer to purchase the Goods and/or the Services in accordance with these Conditions.

3.2 The Order shall be deemed to be accepted on the earlier of Supplier issuing a written acceptance of the Order or doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

3.3 The Order number and date shall be given by Supplier on all delivery advices and notes, invoices, correspondence and packaging relating to the Order. Buyer reserves the right to withhold payment where such information is not given.

## 4. QUALITY AND DEFECTS

4.1 The Goods shall:

- 4.1.1 be of satisfactory quality and be free from defects in design, material and workmanship and remain so for the longer of: (i) 12 months from the date of despatch of the Goods (or the goods into which those Goods have been incorporated by Buyer) to Buyer's customer; or (ii) the period for which Seller typically warrants such goods shall be of satisfactory quality and be free from defects in design, material and workmanship;
- 4.1.2 be capable of any standard of performance specified in the Order;
- 4.1.3 conform with any sample, patterns, descriptions, quantity or specification supplied or agreed to by Buyer; and
- 4.1.4 comply with all statutory requirements and regulations relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

4.2 The Services shall conform in all respects with the Order and any specification supplied or agreed to by Buyer and will comply with all statutory requirements and regulations relating to the performance of the Services.

4.3 Buyer's rights under these Conditions are in addition to statutory conditions or terms implied in favour of Buyer.

4.4 Supplier shall maintain and implement quality, specification control, testing and inspection procedures to enable Supplier to consistently comply with its obligations under the Contract and, at the request of Buyer, will supply Buyer with full details of such procedures and Supplier's test results and inspection reports.

4.5 Supplier shall ensure that, at all times, it has and maintains all the licenses, authorisations, consents or permits that it needs to carry out its obligations under the Contract.

4.6 At any time prior to the delivery of the Goods, Buyer shall have the right to inspect and test the Goods and the procedures referred to in Condition 4.4. If Buyer is of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specification supplied or agreed to by Buyer or that the procedures are insufficient or inappropriate to ensure consistent conformity with the Contract, Buyer shall inform Supplier and Supplier shall immediately take such action as is necessary to ensure such conformity. Notwithstanding any such inspection or testing, Supplier shall remain fully responsible for the Goods and procedures and any such inspection or testing shall not diminish or otherwise affect Supplier's obligations under the Contract.

4.7 If any of the Goods or Services fail to comply with the provisions set out in this Condition 4 Buyer shall be entitled to avail itself of any one or more of the remedies listed in Condition 13.

4.8 In addition to the remedies available to Buyer, Supplier is liable to pay for all associated costs incurred by Buyer due to the supply of non-compliant Goods or Services. These associated costs are calculated based on:

- 4.9.1 a fixed administrative charge of £150 (excluding VAT) to cover all handling, data entry and reporting activities resulting from the supply of non-compliant Goods or Services;
- 4.9.2 any additional costs incurred by the Buyer in managing the non-compliant Goods or Services, including but not limited to, all reworks, investigations and other consequential costs.

Buyer reserves the right to alter the fixed administration charge at anytime without notice to the Supplier.

## 5. INDEMNITY

5.1 Supplier shall keep Buyer indemnified against all direct, indirect and consequential liability, loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

- 5.1.1 defective Goods or Services including without limitation, defective workmanship, quality or materials;
- 5.1.2 any infringement or alleged infringement of any intellectual property rights caused by the possession, use, manufacture or supply of the Goods or possession or use of the work the product of the Services; and
- 5.1.3 any claim made against Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by Buyer'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 or the performance of the Services.

5.2 Supplier shall insure its liability under the Contract with a reputable insurance company for a sum of not less than £10 million pounds sterling and at the request of Buyer shall produce to Buyer full details of such insurance and evidence of its renewal.

## 6. DELIVERY AND PERFORMANCE

6.1 The Goods shall be delivered carriage paid, to the place of delivery specified by Buyer. Supplier shall off-load the Goods as directed by Buyer.

6.2 The Goods shall be marked in accordance with Buyer's instructions and properly packed and secured so as to reach their destination in an undamaged condition.

6.3 The date for delivery of the Goods shall be specified in the Order, or if no such date is specified delivery shall take place within 28 days of the Order.

6.4 The date or dates for performance of the Services shall be as specified in the Order or such other date or dates agreed by Buyer.

6.5 Time for delivery of the Goods and performance of the Services shall be of the essence.

6.6 Supplier shall invoice the Buyer upon, but separately from, receipt of the Goods by Buyer or completion of the Services.

6.7 Notwithstanding Condition 3.2, Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows, inter alia, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

6.8 Unless otherwise stipulated by Buyer in the Order, deliveries of the Goods shall be accepted by Buyer only during normal business hours.

6.9 If the Goods are not delivered in full and/or performance of the Services is not completed on the due date then, without prejudice to any other rights which it may have, the Buyer reserves the right to:

- 6.9.1 cancel the Contract in whole or in part;
- 6.9.2 refuse to accept any subsequent delivery of the Goods and/or performance of the Services which Supplier attempts to make;
- 6.9.3 recover from the Supplier any expenditure reasonably incurred by Buyer in obtaining the Goods or the Services in substitution from another supplier; and
- 6.9.4 claim damages for any additional costs, loss or expenses incurred by Buyer which are in any way attributable to Supplier's failure to deliver the Goods in full or complete performance of the Services on the due date.

6.10 Buyer shall not be obliged to return to Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by Buyer.

6.11 Supplier shall not deliver the Goods in instalments without Buyer's prior written consent. Where Buyer agrees to accept delivery of the Goods by instalments the Contract will be construed as a single contract in respect of each instalment. Nevertheless failure by Supplier to deliver any one instalment shall entitle Buyer at its option to treat the whole Contract as repudiated.

6.12 If the Goods delivered or Services performed by Supplier are in excess of the quantities ordered, Buyer shall not be bound to pay for the excess and any excess will be and will remain at Supplier's risk and Goods will be returnable at Supplier's expense.

6.13 If the Goods delivered or Services performed by Supplier are less than the quantities ordered, Buyer shall have the right, but not obligation to either:

- 6.13.1 accept the quantity of Goods or Services received from Supplier and make payment only for that quantity received. Buyer will have the discretion to cancel any outstanding Goods or Services remaining on the Contract.
- 6.13.2 reject the Goods or Services delivered, with Supplier required to resupply at the correct quantity levels. Any Goods or Services rejected will remain at Supplier's risk and Goods will be returnable at Supplier's expense.

6.14 Buyer shall be entitled to reject any Goods and/or to rectification of any Services which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods or Services until Buyer has had a reasonable time to inspect them following delivery or performance or, if later, within a reasonable time after any defect in the Goods or Services has become apparent.

6.15 Supplier shall give Buyer prior written notice of:

- 6.15.1 any delivery of the Goods or items accompanying the Goods having toxic or other hazards to the safety or health of persons or property and shall provide full details of such hazards and of all precautions which should be taken by Buyer in respect of the delivery, storage, handling, installation and use of the Goods or items and provide Buyer with all information relating to the properties of the Goods or items to enable Buyer to comply with all relevant legislation relating to the Goods or items and/or such hazards; and
- 6.15.2 any delivery of Goods which are perishable or of limited lifespan and of any circumstances which may adversely affect the lifespan of such Goods.

6.16 If for any reason Buyer is unable to accept delivery of the Goods at the time when they are due for delivery Seller shall, if its storage facilities permit, store the Goods in a secure manner until Buyer is ready to accept delivery and Buyer shall pay Seller's reasonable charges for storage.

6.17 Where Supplier performs the Services on Buyer's premises, Supplier shall, and shall procure that its personnel comply with Buyer's safety and security regulations and shall not, without the prior written consent of Buyer, use any of Buyer's facilities, tools, apparatus or equipment. Where such consent is given by Buyer, Supplier must satisfy itself as to the fitness and suitability of such facilities, tools, apparatus and equipment and shall assume all liability arising out of their use.



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## 7. RISK AND OWNERSHIP

The Goods shall remain at the risk of Supplier until delivery to Buyer is complete (including off-loading and stacking) when ownership of the Goods shall pass to Buyer.

## 8. PRICE

8.1 The price of the Goods and/or Services shall be as stated in the Order and, unless otherwise agreed in writing by Buyer, shall be exclusive of value added tax but inclusive of all other charges.

8.2 No variation in the price or extra charges will be accepted by Buyer.

8.3 Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by Supplier.

## 9. PAYMENT

Unless otherwise agreed in writing, Buyer shall pay the price of the Goods and/or Services by the end of the month following the month of delivery of the Goods or completion of the Services or, if later, after acceptance of the Goods and/or Services by Buyer.

## 10. CONFIDENTIALITY

10.1 Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which have been disclosed to Supplier by Buyer or its agents, or which are created by Supplier in performing the Order and any other confidential information concerning Buyer's business or its products which Supplier may obtain and Supplier shall restrict disclosure of such confidential information to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging Supplier's obligations to Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind Supplier.

10.2 Notwithstanding Condition 10.1, Supplier may disclose Buyer's confidential information to the extent it is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

## 11. BUYER'S PROPERTY

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

11.2 Any copyrights, design rights or other intellectual property rights created by Supplier in performing the Order shall belong to Buyer absolutely and shall be used for the purpose only of performing the Order and no other purpose without the prior written consent of Buyer. At Buyer's request and expense Supplier shall sign such documents as Buyer may require to perfect Buyer's title to such intellectual property rights.

11.3 Supplier must have, or put in place systems to ensure that the Buyer's property is clearly identifiable and where possible must be physically marked as such.

## 12. TERMINATION OF THE CONTRACT

12.1 Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving Supplier written notice whereupon all work on the Contract shall be discontinued and Buyer shall pay to 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 other loss.

12.2 Buyer shall have the right at any time by giving written notice to Supplier to terminate the Contract immediately if:

- 12.2.1 Supplier commits a breach of any of the terms or conditions of the Contract;
- 12.2.2 any distress, execution or other process is levied upon any of the assets of Supplier;
- 12.2.3 Supplier has a bankruptcy order made against it or makes an arrangement or composition with its 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 or enters into liquidation, or has a receiver and/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 Supplier or notice of intention to appoint an administrator is given by Supplier or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented for the winding up of Supplier or for the granting of an administration order in respect of Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of Supplier or anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to Supplier or Buyer apprehends that any of the foregoing is about to occur in relation to Supplier;
- 12.2.4 Supplier ceases or threatens to cease to carry on its business; or
- 12.2.5 the financial position of Supplier deteriorates to such an extent that in the opinion of Buyer the capability of Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.

12.3 Termination of the Contract for any reason shall be without prejudice to rights of Buyer accrued prior to termination. The Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## 13. REMEDIES

13.1 Without prejudice to any other right or remedy which Buyer may have, if any Goods are not supplied or Services are not performed in accordance with, or Supplier fails to comply with, any of the terms of the Contract, Buyer shall be entitled to any one or more of the following remedies at its discretion, whether or not any part of the Goods or Services has been accepted by Buyer:

- 13.1.1 to rescind the Order;
- 13.1.2 to reject the Goods (in whole or in part) and return them to Supplier at the risk and cost of Supplier on the basis that a full refund for the Goods so returned shall be paid immediately by Supplier;
- 13.1.3 to reject the Services (in whole or in part) on the basis that a full refund for the Services so rejected shall be paid immediately by Supplier;
- 13.1.4 at Buyer's option to allow Supplier the opportunity at Supplier's expense either to remedy any defect in the Goods or the Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- 13.1.5 to refuse to accept any further deliveries of the Goods or performance of the Services but without any liability to Supplier;
- 13.1.6 to carry out at Supplier's expense any work necessary to make the Goods or Services comply with the Contract; and

13.1.7 to claim such damages as may have been sustained in consequence of Supplier's breaches of the Contract.

## 14. GUARANTEE/WARRANTY CLAIM

14.1 Without prejudice to any other right of Buyer, where under the terms of any warranty or guarantee given by Buyer on the resale of the Goods or on the sale of any goods in which the Goods are included, Buyer is responsible for or has agreed to the repair or replacement of the Goods, Supplier shall, if requested by Buyer, repair or replace the Goods (as directed by Supplier) and reimburse or pay to Buyer all transport and labour costs incurred by Buyer in satisfying the claim under the warranty or guarantee given by Buyer.

14.2 In addition to the costs outlined in Condition 14.1, Supplier is liable to pay to Buyer a fixed administrative charge of £150 (excluding VAT) for each warranty claim to cover all handling, data entry and reporting activities arising from such claim. Buyer reserves the right to alter the fixed administration charge at anytime without notice to Supplier.

## 15. SET OFF

Buyer shall be entitled to apply any sum due from Buyer to Supplier in settlement of any sum due from Supplier to Buyer or to any other company in Buyer's Group and, where there is any amount due from any other company in Buyer's Group to Supplier, Buyer shall on behalf of Supplier be entitled to give to such other company a good receipt for any sum which such other company may pay to Buyer in settlement of any sum due from Supplier to Buyer.

## 16. FORCE MAJEURE

Buyer reserves the right to defer the date of delivery of the Goods or performance of the Services or payment or to cancel the Contract or reduce the volume of the Goods or the extent of the Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Buyer including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## 17. COMPLIANCE WITH LAWS AND POLICIES

17.1 In performing its obligations under the Contract, Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force.

17.2 Supplier shall:

- 17.2.1 comply with all laws relating to anti-bribery and anti-corruption (including the UK Bribery Act 2010) and all policies of Buyer relating thereto notified to Supplier from time to time and shall not contravene any such law or policy;
- 17.2.2 have and enforce as appropriate its own policies and procedures to ensure compliance with Condition 17.2.1;
- 17.2.3 promptly notify Buyer if any request or demand for financial or other advantage of any kind is received by Supplier in connection with the performance of the Contract or if any foreign public official is appointed as an officer or employer of or acquires an interest in Supplier; and
- 17.2.4 ensure that any person performing any aspect of the Contract complies with this Condition 17.1

17.3 In performing its obligations under the Contract, Supplier shall:

- 17.3.1 comply with all anti-slavery and human trafficking laws, statutes, regulations from time to time in force (including the UK Modern Slavery Act 2015) and all policies of Buyer relating thereto notified to Supplier from time to time and shall not contravene any such law or policy;
- 17.3.2 have and enforce as appropriate its own policies and procedures to ensure compliance with Condition 17.3.1; and
- 17.3.3 require that each of its subcontractors and suppliers shall comply with the Anti-slavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the UK Modern Slavery Act 2015.

## 18. GENERAL

18.1 Supplier shall not be entitled to assign or sub-contract the Contract or any part of it without the prior written consent of Buyer.

18.2 Buyer may assign the Contract or any part of it to any person, firm or company.

18.3 Supplier shall not use the Contract or the name of Buyer in any advertising or promotion without Buyer's prior written consent.

18.4 Failure or delay by Buyer in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

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

18.6 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 principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

18.7 These Conditions constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions.

18.8 If any provision or part-provision of the Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Conditions.

18.9 Subject to Conditions 18.1 and 18.2, nothing in these Conditions confers on any third party any benefit or any right to enforce any of these Conditions.

18.10 The formation, existence, construction, performance, validity and all other aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts save that nothing in this Condition 18.10 shall limit the right of Buyer to bring proceedings in any other court of competent jurisdiction.

