

# Platinum Facilities & Maintenance Services Ltd – Standard Terms and Conditions of Purchase

## 1-DEFINITIONS

In these Conditions "the Purchase Order" shall mean a document headed "Order", together with any amendment thereto signed by or on behalf of the Purchaser, and issued to the "Supplier", "the Purchaser" shall mean Platinum Facilities & Maintenance Services Ltd. "the Supplier" shall mean the person or firm or Company to whom the Purchase Order is issued; "the Goods" shall hereof mean the goods described in the Purchase Order (including any replaced goods and spare parts) and the term "the Goods" shall whenever the context permits include any work or service performed under the Contract by the Supplier or any of its sub contractors in connection with or incidental to the Goods or Works; "the Works" shall mean the works for and in connections with which the Goods are required; "the Owner" shall mean the person or persons or firm or Company for whom the Purchaser has undertaken to execute the Works or any part thereof; "the Contract" shall mean these Conditions, the Purchase Order and the documents listed therein; "these Conditions" shall mean the terms and conditions contained herein.

## 2-PRICE AND PAYMENT

- a) The price of the goods shall be as stated in the Purchase Order and except as otherwise agreed in writing between the parties shall be the total compensations payable to the Supplier under the Contract.
- b) Unless otherwise agreed in writing by the Purchaser, the price shall include as appropriate (i) secure and proper packaging acceptable to the Purchaser and (ii) the cost of delivery to the address specified under Clause 3 hereof.
- c) Where the supply of Goods is subject to the addition of Value Added tax, the price of the Goods and the amount of Value Added tax shall be stated separately.
- d) The Purchaser reserves the right to set off any sum in respect of which the Supplier may be indebted or in default to the Purchaser whether or not in connection with the sale or supply of the Goods or performance of any services.
- e) Unless the Purchaser otherwise provides, the Supplier shall not invoice the Purchase until the performance of this Contract has been completed.
- f) Unless the Purchase Order otherwise provides, payment of the amounts correctly invoiced by the Supplier shall, subject to sub-clause (d) of this Clause, be made by the end of the Second month following the months in which the invoice is received.
- g) No payment made by the Purchaser shall in any way be constructed as acceptance of any of the Goods supplier or work or services performed by the Supplier or any of its sub-contractors and no payment shall in any way impair or restrict any rights or remedies the Purchaser may have under the Contract or otherwise for and in connection with the supply of the Goods and/or the performance of the work or services under the Contract by the Supplier or any of its sub-contractors

## 3-DELIVERY

- a) The Goods shall be securely and properly packaged by the Supplier in accordance with any instructions given by the Purchaser and delivered to the address specified on the Purchase Order (hereafter called "the Place of Delivery"). The Supplier shall give reasonable notice to the Purchaser of the time of delivery.
- b) It is a fundamental term of the Contract that the Supplier shall, subject to the provision of Clause 5, 5 and 14 hereof, deliver the Goods at the time stated in the Purchase Order.
- c) Subject to the sub-clause (b) above, the Supplier shall give the Purchaser immediate notice of any potential delay in delivery.
- d) Without prejudice to any of the Supplier's obligations under the Contract the Supplier and its sub-contractors shall at all times allow persons duly authorised by the Purchaser to enter upon the premises where the Goods or any part thereof is being manufactured or any work in connection therewith is being carried out and shall provide such programmes, schedules, reports and other information as the Purchaser may require to monitor the progress of the Goods and to satisfy the Purchaser that all practicable measures have been and are being taken to meet the due time of delivery.
- e) Delivery in instalments or separate consignments shall be permitted only with the prior consent in writing of the Purchaser and only in accordance with the terms of such consent, and such permission if given, shall not entitle the Supplier to claim payment prior to delivery of the whole of the Goods unless otherwise expressly agreed in writing by the Purchaser.

## 4-RISK AND TITLE

- a) In no circumstance shall the risk of damage to or loss or destruction of the Goods pass to the Purchaser prior to delivery of the Goods at the Place of Delivery.
- b) Title in the Goods or any part thereof shall pass to the Purchaser on their being appropriated to the Contract or on delivery of or on payment for the Goods or any such part whichever is the sooner. Any Goods for which the Purchase has paid but which have not been delivered shall be clearly identified as the property of the Purchaser and stored in a safe and otherwise suitable conditions and in accordance with any instructions given by the purchaser.
- c) Where the Purchaser or the Owner for the purpose of the Contract issues materials or other items free of charge to the Supplier, such materials and other items shall be and remain the property of the Purchaser or Owner as the case may be and shall be used by the Supplier solely in connection with the Contract. The Supplier shall, (unless within three working days from receipt thereof the Supplier notifies the Purchaser in writing to the contrary setting out appropriate details), be deemed to have satisfied itself as to the suitability of such materials and other items for their intended use and to have received same in good order and condition and in the quantities specified in the Contract. The Supplier shall thereafter be responsible for and accountable to the Purchaser for any loss of or damage thereto (including without limitation any waste thereof arising from any fault or neglect of the Supplier) until safe delivery of the completed Goods incorporating the said materials and/or other items is effected in accordance with Clause 3 hereof and any scrap and surplus arising from free-issue materials and/or other items as the Purchaser may at its option have decided and instructed the Supplier is/are (i) safely delivered with the Goods as aforesaid or (ii) sold by the Supplier by competitive Tender and the amount so obtained paid or credited to the Purchaser.

## 5-STORAGE

If the Purchaser is not able to accept delivery of the Goods on the due date:-

- a) the Supplier shall at its own risk (but subject to reimbursement as provided in sub-clause c) of this Clause) if the Purchaser so requests store the Goods at suitable premises, arising the Purchaser beforehand of the particulars of such proposed storage;
- b) the Supplier shall insure the Goods on "all risk" terms acceptable to the Purchaser in the joint names of the Supplier and Purchaser and shall notify the Purchaser of such insurance cover;
- c) subject to receiving a certificate of insurance in a form acceptable to the Purchaser, the Purchaser shall reimburse the Supplier in respect of all reasonable storage charges and insurance premiums so incurred or paid.

## 6-VARIATIONS

- a) The Supplier shall not make any variations in the design, materials or method of manufacture of the Goods, nor substitute other parts or fitments for any proprietary or special parts or fitments ordered by the Purchaser WITHOUT THE PRIOR WRITTEN CONSENT OF THE PURCHASER.
- b) If the Purchaser refused its consent under Sub-Clause (a) above, and the Supplier is for any reason unable to perform the Contract without making the variation or substitution as requested the Purchaser may terminate the Contract in accordance with the provisions of Clause 11 (b) (i) hereof.
- c) Where the Contract or any part thereof is terminated under sub-clause (b) above, any payments already made by the Purchaser shall be reimbursed to the Purchaser.

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- d) The Purchaser shall have the right from time to time during the performance of the Contract, by notice in writing to direct the Supplier to add to or omit, or otherwise vary the Goods (including without limitation any required change in any drawings, specifications instructions or directions) and the Supplier shall carry out such variations and be bound by the same terms and conditions so far as applicable, as though the said variations were stated in the Contract.
- e) Any adjustment to the Contract price occasioned by any variation shall be ascertained and determined as the same level of pricing as that stated in the Purchase Order. The Supplier shall within five working days from receipt of the Purchaser's direction and if that direction so instructs prior to proceeding with the required variation advise the Purchaser in writing of its estimate of the amount of any such adjustment to the Contract price.
- f) If, in the opinion of the Supplier any such direction is to prevent the Supplier from fulfilling any of its obligations under the Contract, the Supplier shall within five working days from receipt of the Purchaser's directions so notify the Purchaser and the Purchaser shall decide with all possible speed whether or not the same shall be carried out and shall confirm his direction in writing and modify the said obligations to such an extent as in the Purchaser's opinion may be justified. Until the Purchaser so confirms his instruction the shall be deemed not to have been given. If the Supplier fails to notify the Purchaser as aforesaid the Supplier shall forfeit any right to modification to any of its obligations.
- g) Variations shall be confirmed by amendment to the Purchase Order, signed by or on behalf of the Purchaser and issued to the Supplier.

### 7-QUALITY

- a) (i) All Goods (including raw materials and unfinished goods) shall be provided and/or made in a professional manner using all due care and skill and shall, on delivery to the Purchaser, be of merchantable quality, fit for the purpose for which the Purchaser requires them and where applicable in accordance with the Purchaser's specifications and of first class materials, workmanship and design and to the satisfaction of the Purchaser and the Owner.
- (ii) All Goods shall comply in all respects with the terms of the Contract and all warranties or representations given or made on behalf of the Supplier or implied at law. For the avoidance of doubt any express warranty or guarantee given by the Supplier shall extend to parts and labour and shall apply until expiry of a period of twelve months from the date the Works (incorporating the Goods) are completed, accepted and put into use by the Owner.
- b) The Supplier shall satisfy that it understands the Purchaser's requirements in order to comply with the obligations contained in sub-clause (a) above and also to prevent delay caused by any work which may be necessary to meet the Purchaser's requirements. The cost of any such work shall be borne by the Supplier.
- c) For the purpose of satisfying the Purchaser that the obligations contained herein are being observed, the Supplier and its sub-contractors shall at times allow persons duly authorised by the Purchaser to make and/or witness any such inspections or tests which the Purchaser may require and shall afford the Purchaser all reasonable facilities and assistance which shall be free of costs to the Purchaser unless specifically agreed in writing to the contrary.

### 8-DEFECTS

- If, on inspection, (whether at any time prior to or after delivery) in manufacture or use, any Goods are found to be faulty in quality, damaged, defective, or not to comply with these Conditions (including Goods damaged in transit), the Purchaser may, at its option (i) reject the whole or any part of the Goods in which event any payment previously made therefore shall be refunded to the Purchaser or (ii) require the Supplier at its own cost either to replace the Goods or to rectify any defect or (iii) undertake or procure at the risk and expense of the Supplier the replacement of the goods or the rectification of any defect. The twelve month period specified in paragraph (ii) of Clause 7 (a), in respect of the Goods replaced or rectified, be renewed from the date such replaced or rectified Goods are put into use by the Owner.
- b) In addition to its obligations under Clause (a) above the Purchaser shall be indemnified by the Supplier against all loss, damages, claims (including without limitations any claims by third parties) arising by reason of any failure of the Goods to comply with Clause 7 (a) or any other terms of these Conditions whether expressed or implied by statute, common law, custom or otherwise or by reason of any act or omission of the Supplier, its servants, agents or sub-contractors in the performance of the Contract.
- c) Where the Purchaser requires the Supplier to rectify a defect:-
- (i) the cost of collecting the Goods from and returning them to the Purchaser shall be borne by the Supplier;
- (ii) the cost of any additional inspection or testing of the replaced or repaired Goods shall be borne by the Supplier; and
- (iii) the Supplier shall pay to the Purchaser a sum equal to the cost of any additional insurance considered necessary by the Purchaser.
- d) Any inspection, test, checking or approval by or on behalf of the Purchaser (or any failure to inspect, test, check, approve or make complaint to the Supplier), shall in no event be construed as acceptance of any of the Good supplied or work or service performed by the Supplier or any of its sub-Contractors and shall in no way relieve the Supplier from any obligation or liability under the Contract or otherwise.

### 9-ASSIGNMENT AND SUB-CONTRACTING

- a) The Supplier shall not sub-contract or assign the whole or any part of the Contract or the benefit thereof without the written consent of the Purchaser.
- b) When the Purchaser has consented to the placing of sub-contracts copies of each sub-contract or sub-order shall be sent to the Purchaser immediately they are issued unless the Purchaser has specifically requested or approved in writing otherwise.
- c) The Purchaser shall without consent from the Supplier have the right to assign the whole or any part of the Contract or the benefit or burden thereof to any of its parent, subsidiary or associated companies, or to the Owner or any of its subsidiary or associated companies and, with the Suppliers written consent, which shall not be unreasonably withheld, to any other party.

### 10-HEALTHANDSAFETY

- a) The attention of the Supplier is drawn to the obligations imposed by the Health and Safety at Work Act 1974, on designs, manufacture, importers, suppliers, installers or erectors of articles or substances for use at work to ensure so far as is reasonable practicable that such articles or substances are so designed, constructed or installed to be safe and without risk to health when properly used.
- b) Where by reason of its obligations under the said Act or otherwise the Supplier has carried out or arranged for the carrying out of testing and examination of Goods to be sold hereunder for the purpose of ensuring that they are safe and without risks to health when properly used the Supplier shall provide the Purchaser where appropriate on or before delivery of the Goods with proper documented results of such tests or examinations or, in default thereof, certification issued by a duly qualified and authorised person that the tests and examinations proved satisfactory.
- c) Without prejudice to the obligations contained in Sub-Clause (b) above, on or before delivery of the Goods to the Purchaser, the Supplier shall make available to the Purchaser in connections with the Goods information about the use for which such goods have been supplied and tested, and about any conditions necessary to ensure that when installed, commissioned and put to use the Goods will be safe and without risks to health.
- d) Nothing contained in the foregoing provisions of this Clause shall be construed as relieving the Supplier or in any way detracting from any obligations or liability the Supplier may have under the Health and Safety at Work Act 1974 or any modification or re-enactment thereof, or under any other statute, statutory instrument or regulation applicable to the Goods and the use thereof.

### 11-TERMINATION OF THE CONTRACT

- a) The Purchaser shall be entitled to terminate the Contract or any part thereof at any time without reason and with immediate effect. The Purchaser, however, shall in no event be liable to the Supplier for any loss of profit, loss of use or loss of trading revenue, whether arising in connection with or as a result of such termination or otherwise.
- b) The Purchaser shall have the right to terminate the Contract or any part thereof with:

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- (i) if the Supplier shall be in breach of any of the obligations set out in these Conditions or in the Purchaser Order and (if the breach is capable of being remedied) shall not have remedied such breach to the complete satisfaction of the Purchaser within seven days, (or within such longer period as the Purchaser may have agreed in writing), after notice thereof in writing;
  - (ii) in the event that the Supplier, not being a body corporate, becomes bankrupt, or compounds or makes any arrangement with his creditors, or commits an act of bankruptcy, or where the Supplier being a body corporate, goes into liquidation, whether compulsory or voluntary (save for the purpose of reconstructions or amalgamation), or has a receiver and/or Manager appointed of its undertaking or assets or any part thereof.
- c) Termination of this Contract or any part thereof for any reason shall be without prejudice to the rights and remedies of either party hereto accrued up to and including the date of such termination.
- d) Unless the Purchaser's termination notice otherwise provides, upon receipt of such notice the Supplier shall promptly cease any further work (except on any part not terminated by the Purchaser) and shall instruct its sub-contractors if any, to similarly do so, and shall comply with all reasonable instructions from the Purchaser in regard to termination.

### 12- PATENTS, COPYRIGHTS, etc

The Supplier warrants that the supply by the Supplier and the use by the Purchaser or Owner or any other user of the Goods does not and will not infringe the industrial property rights of any third party. Whether in the form of letters patent, registered designs, design copyright, copyright or any other similar right and the Supplier shall indemnify the Purchaser and the Owner from all claims, demands, damages, penalties, costs, expenses or liability arising as a result of the breach of this warranty by the Supplier.

### 13- CONFIDENTIALITY

Any Specifications, plans, drawings, samples, designs or equipment supplied by the Purchaser to the Supplier in connection with the Contract shall remain the property of the Purchaser and shall be treated as confidential and shall not be published or disclosed to any third party or used by the Supplier (except for the purposes of the Contract) save with the consent in writing of the Purchaser.

### 14- FORCE MAJEURE

- a) If either party is prevented or hindered from carrying out its obligations hereunder by Force Majeure (as defined in Sun-Clause (b) of this Clause), then the performance of such obligations shall be suspended for such time as the Force Majeure circumstances last and the party affected shall not be liable for any loss or damage caused to the other by the delay, but shall however, resume performance of the suspended obligations as soon as the Force Majeure circumstances cease to exist unless the Contract has prior thereto been terminated by the Purchaser pursuant to Sub-Clause (c) of this Clause.
- b) "Force Majeure" shall, for the purposes of this Contract mean any circumstances beyond the control of the party affected and which by the exercise of reasonable diligence the said party would have been unable to prevent or provide against, including but not limited to Act of God or Public Enemy, war, rebellion, civil disturbance, fire, accident, compliance with any order, act or regulation of any government agency, national or official strike, lock-out or other trade dispute, but excluding financial distress of the parties.
- c) In the case of Force Majeure extending beyond a reasonable time (which term for the purpose of this Contract shall in any event include any period in excess of sixty days) the Purchaser may by notice in writing to the Supplier terminate the Contract, with no liability on either party for loss or damage thereby occasioned.

### 15- LABELLING AND INSTRUCTIONS

- a) The Supplier warrants that the design, construction, quality and labelling of the Goods shall comply in all respects with any requirements of any statute, order or instruction having the force of law, which may be in force at the time when the Goods are supplied.
- b) All marking and labelling of the Goods (i) necessary to ensure safe and proper handling and (ii) as particularly required by the Purchaser shall be carried out by the Supplier.
- c) Hazardous Goods must have prominent warnings in English on all packaging and documents.

### 16- LIENS AND CLAIMS

The Supplier shall indemnify and hold the Purchaser and the Owner harmless from all liens and other encumbrances against the Goods or any property belonging to or in the possession of the Purchaser or the Owner on account of debts or claims alleged to be due from the Supplier or its sub-contractors to any person, including sub-contractors, and on behalf of the Purchaser or the Owner and in the Purchaser's or the Owner's name, as the case may be, shall defend at its own expense any claim or litigation in connection therewith and shall follow any reasonable instructions issued by the Purchaser or the Owner in connection therewith.

### 17- LATE DELIVERY

If the Goods or any part thereof are not delivered by the due date, the Purchaser may at its option and without prejudice to any other rights or remedies it may have, either:-

- a) refuse to take delivery of or reject the Goods or any part thereof as it may choose, and the Purchaser shall have no liability for the payment thereof; or,
- b) take delivery of and subject to Clause 8 hereof keep the Goods or any part thereof as it may choose, in which event the Supplier shall pay to the Purchaser such Liquidated Damages, if any, as may be specified in the Purchase Order.

### 18- NO WAIVERS

No failure on the part of the Purchaser at any time or from time to time to enforce or to require the strict adherence and performance of any of the terms, conditions and provisions of the Contract shall constitute a waiver of such terms, conditions or provisions and/or affect or impair such terms, conditions or provisions in any way or the right of the Purchaser at any time to avail itself of such remedies as it may have for each and every breach of such terms, conditions or provisions.

### 19- SITE WORKS

Where the Purchase Order provides for installation, erection or other work or service relating to or incidental to the Goods or the Works to be performed by the Supplier at the site of the Works the following terms and conditions will also apply:-

- a) The Supplier shall be deemed to have inspected the site and to have satisfied itself regarding local conditions, facilities and any other circumstances which may affect the Contract and failure by the Supplier to have made such inspections to obtain for itself all required information shall in no way relieve the Supplier from its obligations under the Contract or entitle the Supplier to claim for any additional expenses whatsoever. The Purchaser shall not be liable for any inaccuracy or insufficiency in any information as aforesaid supplied by it.
- b) The Supplier shall comply and shall ensure that its sub-contractors and their employees comply with the Security, safety, Fire and other Rules and Regulations in force on the site from time to time and shall be deemed to have informed itself fully thereon,
- c) The Supplier shall take every practicable precaution and care not to damage or injure any property or person and shall indemnify and hold the Purchaser and the Owner harmless from and against such damages or injury to any person or property whatsoever arising out of or in consequence of any operations of the Supplier or any of its sub-contractors under the Contract and against all actions, demands, damages, costs and expenses rising in connection therewith.

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d) The Supplier shall at its own expense effect and shall ensure that its sub-contractors effect forthwith and in any event prior to entering the site (i) Employer's Liability Insurance in accordance with statutory requirements, (ii) Public Liability Insurance for such sum as the Supplier deems to be appropriate but not less than the sum specified therefore in the Purchase Order for any one occurrence or series of occurrences consequent upon one cause or event and (iii) any other insurance as the Purchaser may stipulate.

e) Without prejudice to anything contained in these Conditions or the Purchase Order the Supplier shall keep pace with the Purchaser's requirements and shall indemnify the Purchaser against any penalties enforced or extra expenses or other liabilities whatsoever caused directly or indirectly to the Purchaser by reason of delay or default in the work of the Supplier or any of its sub-contractors.

### 20-CONDITIONS

No servant or agent of the Purchaser has any authority to agree to any variation of or addition to these Conditions, unless such variation or addition is expressed in writing and specifically agreed and signed on behalf of the Purchaser by a Director or other person duly authorised by the Purchaser. Subject to the foregoing provision of this Clause, nothing contained in any document issued by the Supplier (irrespective of whether same is referred to in the Purchase Order) shall in any way modify or vary these Conditions.

### 21-THIRD PARTY PROVISION

No provision of this contract is intended to or does confer an any third party any benefit or right enforceable at the option of that third party of any liability whatsoever on any third party.

### 22-LEGAL CONSTRUCTION

Unless otherwise agreed in writing this Contract shall in all respects be construed and governed by the law of England, and the parties agree to submit to the jurisdiction of its Courts.

### 23-ENTIRE AGREEMENT

This Agreement comprises the entire understanding and agreement of and between the parties with regard to the subject matter hereof and supersedes all prior representations and agreement oral and written. It shall not be varied except by an instrument in writing of subsequent date duly executed by an authorised representative of each party.