

QVF PROCESS SYSTEMS LTD

CONDITIONS OF PURCHASE

1 INTERPRETATION

1.1 In these conditions of purchase the following words shall have the following meanings:

"Company" means QVF Process Systems Limited (Company Number 02838099) whose registered office is at Tollgate Drive, Tollgate Industrial Estate, Stafford, ST16 3HS.

"Conditions" means the terms set out below and on the Purchase Order.

"Confidential Information" means all technology, technical data, commercial information, know-how, trade secrets, specifications, inventions, processes, initiatives and other information of a confidential nature disclosed by or on behalf of the Company to the Supplier in connection with a Contract and whether disclosed before, on or after the date of each Contract.

"Contract" means any contract between the Company and the Supplier for the supply of goods and/or services to the Company and includes the terms set out in the Purchase Order to which it relates.

"Goods" means any goods which the Company agrees to purchase from the Supplier pursuant to a Purchase Order.

"Order Acknowledgement" means the Supplier's written or verbal acknowledgement of acceptance of a Purchase Order.

"Purchase Order" means a purchase order issued by the Company for goods and/or services from the Supplier.

"Services" means any works and/or services to be performed by the Supplier for the Company pursuant to a Purchase Order.

"Supplier" means the Company, firm, organisation, body or person to whom the Purchase Order is addressed.

"Tax" means all forms of tax, charge, duty, impost, withholding, deduction, rate, levy and governmental charge (whether national or local) in the nature of tax whatsoever and whenever created, enacted or imposed, and whether of the jurisdiction of the Company's incorporation or elsewhere, and any amount whatever payable to any statutory or governmental authority or body (whether in the jurisdiction of the Company's incorporation or elsewhere) involved in the collection or administration of tax or any other person as a result of any enactment relating to tax, together with all related fines, penalties, interest, costs, charges and surcharges.

"Works" means the Goods and Services (as appropriate).

1.2 In these Conditions: (a) the words "agreed in writing" shall mean agreed in writing and signed by a duly authorised officer of the Company; (b) words such as "include" or "including" mean "including without limitation to the generality of the preceding words"; and (c) any reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated.

2 FORMATION OF CONTRACTS

- 2.1 These Conditions are the only terms upon which the Company is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of any other terms in any document or other communication used by the Supplier in concluding any Contract. In particular the Supplier's standard terms of sale are expressly excluded from all Contracts. Any reference to the Supplier's quotation, acknowledgement or acceptance of order or other similar document shall not include any terms delivered with, referred to or stipulated or contained in such documents and they shall not form part of any Contract.
- 2.2 Each Purchase Order shall be deemed to be an offer by the Company to purchase Works subject to these Conditions. Each Purchase Order shall be accepted by the Supplier when [the Supplier gives notice of acceptance by way of an Order Acknowledgement and such Order Acknowledgement has been received by the Company [except that (subject to Condition 2.3) a Purchase Order shall be deemed accepted by the Supplier if the Supplier does not notify the Company that it rejects the Purchase Order within 5 days after the Purchase Order was notified to the Supplier].
- 2.3 The Company reserves the right to withdraw any Purchase Orders at any time prior to actual receipt of an Order Acknowledgement without liability.
- 2.4 Any variation to the Purchase Order, the Contract or these Conditions shall have no effect unless expressly agreed in writing by the Company.

3 BLANKET ORDERS & FORECASTS

- 3.1 Where the Company places and the Supplier accepts a blanket order, the Supplier agrees to supply such of the Company's requirements of the Works as the Company may from time to time specify in delivery schedules and the Company agrees (subject to the Contract) to pay for such Works. Until the receipt of a delivery schedule (which may be set out in the Purchase Order or supplied separately by the Company) the Supplier is not authorised to commence the manufacture, production or performance of the Works.
- 3.2 The Company shall be entitled to vary the delivery dates specified in the delivery schedule provided the Seller is given reasonable notice of such change.
- 3.3 Any forecasts provided by the Company are given in good faith but are estimates only and shall not be binding upon the parties.

4 INSPECTION AND TESTING

- 4.1 At any time before delivery of the Works the Company (or any representative of the Company) may inspect or test the Works at any reasonable time and the Supplier shall arrange for reasonable facilities at and access to all premises where such Works are located.
- 4.2 If the Company (or any representative of the Company) reasonably considers that the Works do not or shall not conform with the Contract, the Purchase Order or to any specifications supplied or advised by the Company to the Supplier, the Company shall inform the Supplier and the Supplier must immediately take such action as is necessary to ensure conformity. If the Supplier fails to do so the Company may without prejudice to any other right or remedy that it may have to terminate the relevant Contract or any part or parts of it without any further liability to the Supplier.

- 4.3 The Supplier shall give the Company adequate notice of any works tests which the Supplier may conduct. The Company shall be entitled to attend such works tests and the Supplier shall promptly provide the Company with such test results or certificates as the Company or its customers may reasonably require from time to time.
- 4.4 Any inspection, testing, attendance or receipt of test results or certificates by the Company (or the Company's representative) shall not relieve the Supplier of any obligation or liability under the Contract or any applicable law and shall not imply any acceptance of the Works by the Company.
- 4.5 Prior to delivery the Supplier shall provide the Company with a list by name of any harmful or potentially harmful properties or ingredients in the Works and thereafter information concerning any changes in such properties or ingredients. The Company shall rely on the supply of such information from the Supplier in order to satisfy its own obligations under the Health and Safety at Work Act 1974 and any other relevant legislation.

5 DELIVERY

- 5.1 The Works shall be delivered to the address set out in the Purchase Order (or such other address as is agreed in writing), unless the Company specifically agrees to collect the Works from the Supplier's premises, (in which case delivery is deemed to have taken place upon collection by the Company). Delivery must take place on the date or within the period specified in the Purchase Order. Deliveries shall be made during the Company's normal office hours and the Supplier shall promptly notify the Company of any anticipated delay in the delivery of the Works. Time for the delivery shall be of the essence of the Contract.
- 5.2 If the Works are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
- (a) terminate the Contract in whole or in part;
 - (b) refuse to accept any subsequent delivery of the Works which the Supplier attempts to make;
 - (c) recover from the Supplier any expenditure reasonably incurred by the Company in obtaining the Works from another Supplier; and
 - (d) claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to deliver the Works on the due date.
- 5.3 The Supplier shall arrange at its own cost for the carriage and insurance of the Works to the place of delivery and delivery to any carrier shall not be delivery to the Company (for the avoidance of doubt any such carrier shall be deemed to be an agent of the Supplier and not of the Company). Delivery shall be completed when the Works have been unloaded at the place of delivery and signed for by a duly authorised representative of the Company. For the avoidance of doubt any such signature shall only constitute confirmation that a delivery has been made. It shall not constitute acceptance of (and the representative is not authorised to accept) any terms put forward by the Supplier or confirmation or acceptance that the Works comply with the Contract or have been delivered in full.
- 5.4 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows the order number, date of order, part number, consignment quantity, number of packages, contents and (in the case of part delivery) the outstanding balance remaining to be delivered together with such other documentation as the Customer may reasonably require. All such documentation shall be treated for the purposes of the Contract and these Conditions as part of the Works to which they relate.
- 5.5 The Supplier shall ensure at its own cost that all Works are properly packed so that they are delivered in good condition and so that they can be stored without damage. The packaging must bear the description and quantity of the contents and the Company's order number. The Supplier shall also supply on delivery of the Works all operating and safety instructions (with warning notices clearly displayed) and all other information as may be necessary for the proper use, maintenance and repair of the Works.

- 5.6 Containers and packaging shall, if requested by the Supplier, be returned at the Supplier's own cost and risk.
- 5.7 If the Supplier does not comply with Conditions 5.4 or 5.5 the Company may reject the Works without prejudice to its other rights and remedies and recover from the Supplier all losses suffered by the Company arising out of or with this Contract.
- 5.8 The Company shall not be deemed to have accepted the Works until the Company has had 30 days (or such longer time as is reasonable) to inspect them following delivery.
- 5.9 Where the Company agrees to accept delivery by instalments, failure to deliver any instalment shall entitle the Company at its option to treat the Contract as a whole as repudiated.
- 5.10 The Company shall not be responsible for any Works provided in excess of the amount specified in the Purchase Order and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 5.11 Where the Company is unable to take delivery of the Goods and/or performance of the Services on the due delivery date and notifies the Supplier of such prior to delivery the Supplier shall store or arrange for the storage of the Goods for a reasonable time (at the Company's reasonable expense) and/or for the re-performance of the Services and shall safeguard the Goods and take all reasonable steps to prevent their deterioration until actual delivery.

6 RISK/ OWNERSHIP

- 6.1 Risk in the Works shall pass to the Company on delivery to the premises specified by the Company in accordance with Condition 5.3.
- 6.2 Ownership (legal and equitable) of the Works shall pass to the Company on the earlier of (i) payment for the Works concerned; and (ii) delivery of the Works to the Company.

7 PRICE

- 7.1 The price payable for the Works shall be that stated in the Purchase Order and unless otherwise agreed in writing shall be:
- (a) fixed for the duration of the Contract;
 - (b) be exclusive of value added tax (which shall be payable by the Company in addition to the price on receipt of a valid VAT invoice); and
 - (c) inclusive of all other charges including packaging material, packing, shipping, loading, carriage, insurance and any duties, imposts, levies or tax (other than value added tax).

8 PAYMENT

- 8.1 The Supplier may invoice the Company on or at any time after delivery of the Works. Each invoice shall quote the number of the Purchase Order.
- 8.2 Unless otherwise stated in the Purchase Order, the Company shall pay the price of the Works within 60 days after the last day of the month of receipt by the Company of a proper invoice but time for payment shall not be of the essence of the Contract.
- 8.3 The Company reserves the right to set off any amounts owing at any time from the Supplier or any Subsidiary or Holding Company (as such terms are defined in section 736 of the Companies Act 1985) of the Supplier to the Company against any sums payable by the Company to the Supplier or any Subsidiary or Holding Company of the Supplier under the Contract or any other contract.

- 8.4 In the event that the Supplier supplies any Works that:
- (a) are Tax (including without limitation value added tax) exempt;
 - (b) are chargeable at a lower rate of Tax than that which has been applied to the Works under the Contract; or
 - (c) the Supplier fails to provide the Company with the appropriate documentation identifying the Works as Tax exempt (including without limitation any value added tax exemption certificate) in a form recognised by the Company and that enables the Company to claim such exemption or lower rate of Tax
- then the Company shall be entitled to deduct such Tax from any sum payable under the Contract.
- 8.5 In the event that the Construction Industry Scheme applies to the Works under the Contract the Supplier shall provide the Company prior to commencing the Works all documentation required by the Company (including without limitation any documentation as evidence that the correct tax shall be paid) and if:
- (a) the Supplier holds a valid Registration Card the Company shall deduct from any sums payable for labour an amount on account of the Supplier's tax and national insurance contribution liabilities;
 - (b) the Supplier holds a valid Tax Certificate the Company shall pay the Supplier gross, that is without any such amounts described in Sub-Clause (a) deducted; or
 - (c) if the Supplier fails to provide sufficient documentary evidence of the tax payable for the Works under the Contract to the Company's reasonable satisfaction the Company shall be entitled to deduct any such tax and national insurance contribution liabilities as if the Works were covered by Clause 8.5 (a).

9 QUALITY

- 9.1 The Company is relying on the Supplier's skill and judgment in relation to the Works and the Supplier undertakes and represents to the Company that the Works and any and all labelling and packaging will:
- (a) conform in all respects to the quantity, quality, design, functionality, performance criteria, description, specification, stipulation or standard stated or referred to in the Purchase Order, any literature (whether of a promotional character or otherwise) issued or representations made in connection with the Works;
 - (b) be of first-class materials and workmanship and be executed with all reasonable skill and care by properly qualified and experienced persons;
 - (c) be equal in all respects to any sample, pattern, drawings, demonstration or specification provided or given by either party (which has been accepted in writing by the Company);
 - (d) be fit and sufficient for any purpose indicated (either expressly or by implication) in the Purchase Order or as may be made known by the Company to the Supplier prior to the Contract being entered into;
 - (e) be of satisfactory quality and be free from defects (whether latent or patent) in design (to the extent that the Supplier is responsible for design), materials or workmanship;
 - (f) be so formulated, designed, constructed, manufactured and finished as to be safe and without risk to health; and
 - (g) comply with all relevant laws, regulations, orders, rules and codes of practice (including any relevant British Standards) that may be in force in the United Kingdom and such other territories in which the Company has informed the Supplier that the Works will be supplied from time to time.
- 9.2 The Supplier consents to the Company transferring any guarantee or similar rights given by the Supplier to the Company in relation to the Works to any third party to whom the Company sells, hires or otherwise disposes of the Works with the intent that such guarantee or similar rights may be enforced against the Supplier by the Company and/or any third party claiming through the Company.
- 9.3 The Company's rights under these Conditions are in addition to the statutory conditions implied in favour of a purchaser by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982.

10 INDEMNITY, INSURANCE AND LIABILITY

- 10.1 The Supplier shall keep the Company indemnified in full against any and all direct, indirect or economic loss (including but not limited to loss of profits), liability, damage, injury, claim, action, demand, expense or proceeding awarded against, suffered, incurred or paid by the Company as a result of or in connection with:
- (a) any misrepresentation by the Supplier;
 - (b) any breach by the Supplier of any term of the Contract;
 - (c) (except in respect of any specifications or instructions specifically given by the Company) any infringement or alleged infringement of any third party intellectual property rights caused by the manufacture, supply, use or disposal of the Works;
 - (d) any claim made against the Company by any customer or third party to the extent that such was caused by, relates to or arises from the Works;
 - (e) any loss of or damage to any property supplied by the Company (including but not limited to all plans, designs, drawings and specifications) whilst it is in the possession, control or custody of the Supplier.
- 10.2 The Supplier shall at all times during the Contract and after it ends carry adequate insurances in an amount not less than £5 million to cover any liability for defective or dangerous Works and shall make the policy and premium receipts available for inspection by the Company at any reasonable time.
- 10.3 Any losses or damages suffered or incurred by the Company's group companies shall be recoverable by the Company in the same way as if they had been suffered by the Company itself provided that no person shall be entitled to recover more than once in respect of the same loss.

11 CHANGES TO SPECIFICATION

- 11.1 The Company may at any time make changes in writing to the Contract including changes in the drawings or specifications, method of shipment, quantities or packing. If such changes result in an increased cost of, or time for, the performance of the Contract a fair and reasonable adjustment shall be made to the price, delivery date or both. Any claim for any adjustment by the Supplier must be agreed in writing before the Supplier proceeds with such changes.

12 TERMINATION

- 12.1 The Company shall be entitled to cancel any Contract in whole or in part by giving notice to the Supplier at any time prior to delivery of the Works in which event the Company's sole liability shall be to pay to the Supplier a fair and reasonable sum for any work in progress which the Supplier shall be unable to reuse for any other customer but the Company shall not be liable to the Supplier for any economic loss including direct and indirect loss of revenue, profit, anticipated profit, business contracts, overhead recovery or anticipated savings.
- 12.2 The Company may terminate the Contract immediately if:
- (a) the Supplier is in breach of any term of the Contract which is capable of being remedied and has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
 - (b) the Supplier is in breach of any term of the Contract which is not capable of being remedied;
 - (c) the Supplier fails to provide the Works on the due date;
 - (d) the Works supplied do not conform in every respect with the Contract;

- (e) the Supplier goes into liquidation either compulsory or voluntary, or a resolution is passed for its winding up or a provisional liquidator is appointed, or if an administrator, administrative receiver or receiver is appointed over the whole or part of the Supplier's assets, or any petition or application for the appointment of such persons is filed in respect of the Supplier, or any statutory demand is served on the Supplier or the Supplier becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or any equivalent or analogous event occurs;
- (f) the Company reasonably believes that any of the events mentioned in Condition 12.2(e) as is about to occur in relation to the Supplier; or
- (g) there is a material change in the ownership or control of the Supplier.

12.3 The termination of the Contract (howsoever arising) shall be without prejudice to any rights and remedies, which may have accrued to either party. Any Conditions which impliedly have effect after termination shall continue to be enforceable notwithstanding termination including Conditions 6, 8, 9, 10, 13 and 16.

13 ASSIGNMENT

- 13.1 The Supplier shall not without the prior written consent of the Company assign, transfer sub-contract or hold on trust the Contract or any part of it to or for any other person. If the Company consents to the supplier sub-contracting the Contract (or any part of it) then copies of all sub-orders shall be provided to the Company by the Supplier at the time that they are issued. For the avoidance of doubt any consent given by the Company pursuant to this Condition 13.1 shall not relieve the Supplier of any of its obligations under the Contract.
- 13.2 The Company may assign, transfer or hold on trust the Contract or any part of it to or for any other person. The Company may sub-contract any or all of its obligations under the Contract (in whole or in part) to any of its group companies

14 FORCE MAJEURE

- 14.1 The Company reserves the right without liability to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Works ordered if it is prevented from or delayed in carrying on of its business through any circumstances beyond its reasonable control. If the Company is unable to perform its obligations under these Conditions in accordance with this Condition 14 it will promptly notify the Supplier of the nature and extent of the circumstances in question.

15 CONFIDENTIALITY

- 15.1 Subject to Condition 15.2, the Supplier shall (a) keep the Company's Confidential Information confidential and shall only use it for the purposes of enjoying their rights or complying with or enforcing their obligations under the Contract; and (b) restrict disclosure of the Company's Confidential Information to such of its and its group companies' employees, agents or subcontractors as need to know the same and shall ensure that they are subject to and comply with equivalent obligations of confidentiality to those in this Condition.
- 15.2 The restrictions in Condition 15.1 shall not apply to any Confidential Information:
- (a) in the Supplier's possession (with full right to disclose) prior to receiving it; or
 - (b) which is public knowledge other than by breach of this Condition; or
 - (c) which the Supplier may independently develop or receive from a third party (with full right to disclose).

Nor shall the restrictions prevent the Supplier from disclosing any Confidential Information to the extent that it is required to do so by any court, tribunal or competent regulatory authority.

16 INTELLECTUAL PROPERTY

- 16.1 Ownership in all intellectual property rights in, resulting from or relating to the Works or any materials created in connection with them shall be and remain vested in the party that created them. The Supplier grants the Company a perpetual, irrevocable, royalty free, worldwide licence (with a right to freely sub-licence) to use, dispose of, maintain and modify all Works supplied under each Contract for all purposes.

17 GENERAL

- 17.1 Nothing in the Contract shall render either party the agent or partner of the other and neither party shall enter into any contract as agent of any other party.
- 17.2 Any notice given by either party to the other under the Contract shall be in writing addressed to that other party at its registered office or such address or fax number as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notice or document shall be deemed served, if delivered by hand at the time of delivery, if posted, 48 hours after posting if sent by facsimile transmission, at the time of transmission (provided that a successful transmission sheet is obtained).
- 17.3 If any of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other Conditions and the remainder of the Condition in question shall continue in full force and effect.
- 17.4 Any waiver of the exercise of any right, power or remedy under the Contract shall not be deemed a waiver of any subsequent right, remedy, power or remedy and shall not affect the other terms of the Contract. Each of the Company's rights and remedies under each Condition of the Contract are cumulative and are in addition to the Company's other rights and remedies whether under the Contract or otherwise.
- 17.5 Subject as otherwise expressly provided by these Conditions the rights and remedies provided under these Conditions or any Contract are cumulative and are not exclusive of any rights or remedies provided by law or these Conditions.
- 17.6 Subject to Conditions 13.2 and 17.7 a person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 17.7 These Conditions and all Contracts shall be enforceable by and for the benefit of each of the Company's group companies. These Conditions and all Contracts may be varied or rescinded in accordance with their terms by agreement between the parties and the consent of any person who is not a party to the Contract shall not be required for any such variation or rescission.
- 17.8 The Supplier agrees that it shall have no remedy in respect of any statement innocently or negligently made by or on behalf of the Company prior to the Contract whether such statement was made orally or in writing (unless made fraudulently).
- 17.9 These Conditions and all Contracts shall be governed and construed in accordance with the laws of England and the Company and the Supplier hereby submit to the exclusive jurisdiction of the English Courts.

April 2006