

NAYLOR INDUSTRIES plc

CONDITIONS OF PURCHASE - GOODS AND SERVICES

In these Conditions:

"Company"	means Naylor Industries plc or any of its subsidiaries as specified in the Order
"Conditions"	means these terms and conditions of purchase
"Contract"	means a contract for the purchase of the Goods made by the Company with the Supplier comprising the Order and the Supplier's acceptance of the Order
"Goods"	means the goods which are the subject of the Order including, without limitation, plant, machinery, equipment, vehicles and materials (including packaging), whether raw or partly or wholly manufactured
"Incoterms"	means Incoterms 2010 as published by the International Chamber of Commerce or such other edition in force at the date when the Contract is made
"Order"	means the order or orders placed in writing or sent by e-mail or fax by the Company containing the Company's unique purchase order number incorporating these Conditions
"Services"	means any services to be provided to the Company pursuant to the Order
"subsidiary"	means a subsidiary as defined in section 1159 Companies Act 2006 as amended, re-enacted or replaced from time to time
"Supplier"	means the person, firm or company to whom the Order is issued

1. BASIS OF CONTRACT

- 1.1 An Order constitutes an offer by the Company to buy Goods and/or Services from the Supplier in accordance with these Conditions.
- 1.2 An Order shall be deemed accepted on the earlier of the Supplier issuing written acceptance or any act by the Supplier consistent with fulfilling the Order ("**Acceptance**"), at which point the Contract shall come into existence and Acceptance shall constitute unconditional acceptance of these Conditions (and any specific provision referred to on the face of the Order) where acceptance has not previously been communicated to the Company.
- 1.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance or order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 1.4 In the event of a conflict between any of these Conditions and any specific provision referred to on the face of the Order, such a specific provision shall prevail.

2. DELIVERY AND ADVICE NOTES

- 2.1 The Supplier shall comply in all respects with the Company's programme for delivery of the Goods and performance of the Services and any reasonable request for information about progress against programme shall be provided by the Supplier without delay.
- 2.2 All Goods supplied against the Order shall be properly packed and secured in such a manner as to reach their

destination in good condition, and shall (unless otherwise directed by the Company) be delivered by the Supplier to the Company's works carriage paid, in accordance with the Company's instructions and bearing the Company's order number on each package.

- 2.3 Delivery shall be completed when the Goods have been unloaded in accordance with Conditions 2.4–2.6 at the point of delivery specified in the Order and the delivery has been accepted by the Company.
- 2.4 Where the Goods are delivered to the Company's storage tank or site, in a road tanker or similar vehicle, delivery shall be complete when the Goods pass the final flange of the Company's storage tank.
- 2.5 Where the Goods are delivered in some manner other than as specified in Conditions 2.4 above, delivery shall be complete when the Goods are unloaded at the Company's premises.
- 2.6 The provisions of Conditions 2.4 and 2.5 above are subject to any contrary provision of the Order which may specify a different point at which delivery is complete. Without limitation, the Order may specify that an Incoterm applies in which event delivery shall be completed when delivery is effected as stated in that Incoterm (and if none is so stated, then in accordance with the provisions of Conditions 2.4 and 2.5 above).
- 2.7 The Supplier shall notify the Company of the intended delivery date and time and unless agreed otherwise by the Company all deliveries shall be made to the Company's premises specified in the Order between 9 a.m. and 5 p.m. Monday to Friday.

- 2.8 If Goods are delivered before the date specified in the Order, the Company shall be entitled at its sole discretion to refuse to take delivery or to charge for insurance and storage of the Goods until the contractual date for delivery.
- 2.9 In the event of any strike, lock-out, fire, explosion or accident or of any stoppage of the Company's business or work for reasons beyond its reasonable control which may prevent or hinder the use of the Goods or the Services or which may impair the performance of any obligation of the Company any payment for those Goods or Services may be suspended or postponed at the Company's option without any liability until such time as the circumstances preventing or hindering the use of the Goods or performance of the Services have ceased. The Company shall give the Supplier notice as soon as reasonably practicable of the said circumstances having arisen and the Company shall use and continue to use its reasonable endeavours to overcome the said circumstances and to minimise the said suspension or postponement.
- 2.10 If a carrier is specified in connection with the Order such carrier shall be deemed to be an agent of the Supplier and not of the Company.
- 2.11 Consignment or part deliveries may be rejected unless the Company has expressly agreed to accept such deliveries.
- 2.12 Unless otherwise stated in the Order, the Supplier is solely responsible for obtaining any required export and import licences for the Goods and the Supplier shall be solely responsible for any delays due to such licences not being available when required.
- 2.13 In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Company as to the country of origin of the Goods. The Supplier shall be liable to the Company for all duties and taxes in respect of the import into the United Kingdom of the Goods unless otherwise agreed in writing by the Company.
- 3. TIME**
- 3.1 Where a time is specified (including without limitation a time for delivery or installation) such provision shall be of the essence of the Contract.
- 3.2 Failure by the Supplier to adhere to any provision as to time contained in the Order shall entitle the Company at its option to treat the Contract as repudiated in whole or in part. The Company shall be entitled to exercise its option at any time notwithstanding that it has acquiesced in any delay unless a written extension of time has been given to the Supplier by the Company and the time of any extension has not elapsed.
- 3.3 Unless an extension of time has been agreed by the Company in accordance with Condition 3.2, the Supplier's failure to effect delivery or performance on the date or dates specified shall entitle the Company to purchase substitute Goods or Services and to hold the Supplier accountable for all loss or additional costs (or both) incurred as a result.
- 4. PRICE AND PAYMENT**
- 4.1 Unless otherwise agreed by the Company in writing:-
- 4.1.1 all prices are fixed and inclusive of delivery, VAT (if applicable) and all other applicable duties and taxes;
- 4.1.2 invoices shall not be rendered by the Supplier until completion of delivery of all of the Goods and performance of all of the Services which are the subject of the Order; and
- 4.1.3 payment shall be due 60 days after the end of the month of receipt of the invoice and payment shall be made in GB pounds by bank transfer or cheque.
- 4.2 The Company specifically reserves the right to deduct from any monies due or to be become due to the Supplier any monies due to the Company from the Supplier whether by way of set-off, lien or counterclaim and whether arising in connection with this Contract, another Contract or otherwise.
- 4.3 The Company shall not be responsible for the payment of any charges for Goods supplied or Services performed in excess of the Goods or Services required by the Order or any variation of it unless otherwise agreed in writing by the Company.
- 4.4 No payment of or on account of the Contract price shall constitute any admission by the Company as to proper performance by the Supplier of its obligations.
- 4.5 Company will not be obliged to pay for or return containers, crates or packing materials or other durable packaging of any description.
- 4.6 The Supplier agrees:-
- 4.6.1 to send on the day of despatch for each consignment such advices of despatch as may be indicated on the Order; or
- 4.6.2 to send a monthly statement of account quoting the invoice numbers applicable to each consignment of the Goods and element of the Services that have been delivered by the Supplier and for which payment is due; or
- 4.6.3 to mark clearly the Company's order number on each package, packing note, advice note, invoice, monthly statement and on all other correspondence relating to the consignments of the Goods.
- 4.7 Without prejudice to any other remedy, where the Supplier fails to comply with the provisions of Condition 4.6, the Supplier accepts that a delay in payment may ensue. The Company shall be entitled to take advantage of any prompt payment discount offered to the Company irrespective of any delay in payment due to the Supplier failing to comply with the provisions of Condition 4.6.
- 5. RISK AND TITLE**
- 5.1 Unless otherwise agreed in writing by the Company:
- 5.1.1 risk in the Goods purchased shall pass to the Company upon completion of delivery as specified in Condition 2.3; and
- 5.1.2 title to the Goods or any part of the Goods shall pass upon the earlier of delivery of the Goods as specified in Condition 2.3 and the time of any payment being made for the Goods.
- 5.2 The Supplier shall be responsible for transport and unloading costs and insurance of the Goods to their full value against all risk of damage or loss prior to completion of delivery as specified in Condition 2.3.

5.3 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under the Contract shall be and remain at the sole risk of the Supplier whether or not they are upon premises of the Company or other premises specified in the Order.

6. DATA AND TOOLS

6.1 All materials, drawings, specifications and other data provided by the Company in connection with the Order will at all times remain the property of the Company and shall be delivered up to the Company forthwith on request and are to be used by the Supplier solely for the purpose of completing the Order.

6.2 Any tool or plant which the Supplier may construct or acquire specifically in connection with the Order and in respect of which the Supplier charges the Company shall be and remain the Company's sole and unencumbered property and the Company may at any time call for possession of such tool or plant. The Supplier shall, at all times whilst such tools or plant are in its possession, at its own expense insure the tools or plant against all loss or damage and third party liability which may arise out of the presence of such tools or plant on the Supplier's premises in an amount equal to the full new replacement value of the tools or plant, noting the Company's interest on the insurance policies and naming the Company as loss payee.

7. INSPECTION AND TESTING

Any inspector or representative authorised by the Company shall be entitled to inspect:

7.1 the Goods either complete or in the process of manufacture; or

7.2 any Services being performed;

7.3 and any tools or plant supplied pursuant to Condition 6 above and any other materials supplied by the Company to the Supplier;

at any reasonable time either at the Supplier's works or at the works of any sub-contractor and to require all defects or deficiencies to be made good and alterations made. The exercise or failure to exercise any right granted by this Condition 7 shall not constitute or be taken as acceptance or approval of all or any part of the Goods, the Services or the good condition of the said tools, plant or material.

8. QUALITY AND GUARANTEE

8.1 The Goods shall:

8.1.1 be of first class quality, new;

8.1.2 be supplied strictly in accordance with the quantities, drawings, specifications, standards and stipulations contained in or annexed to the Order and any other provision agreed in writing by the parties;

8.1.3 shall not contain any contaminant or impurity other than as expressly agreed in writing by the Company; and

8.1.4 unless otherwise agreed in writing, conform to all relevant UK and EC statutes, standards, specifications and conditions.

8.2 All work and Services performed by the Supplier shall:

8.2.1 be performed with reasonable skill and care;

8.2.2 be supplied in accordance with good manufacturing practice;

8.2.3 comply with all relevant UK and EC statutes, standards, specifications and conditions; and

8.2.4 comply with the provisions of the Order and any other provision agreed in writing by the parties.

8.3 The Supplier warrants that it has the expertise indicated by it prior to the Contract being entered into and confirms the accuracy of all statements and representations made by the Supplier in respect of the Goods and Services prior to or in the Order.

8.4 Nothing contained in these conditions shall in any way detract from the Supplier's obligations under common law or statute or any express warranty or condition contained in the Order.

8.5 The Supplier agrees to assign to the Company upon request the benefit of any warranty, guarantee or similar right which the Supplier has against any third party manufacturer or supplier of the Goods or any part thereof.

9. HEALTH AND SAFETY

9.1 The Supplier warrants that:-

9.1.1 the Supplier will comply with the duties imposed on it by the Health and Safety at Work etc. Act 1974 or any amendment thereto or re-enactment thereof and of all other relevant statutory provisions, bye-laws, site rules and regulations so far as they are applicable to the Company's site or the Goods or the Services; and

9.1.2 that all Goods supplied will be supplied with all necessary certificates of conformity safety data and information sheets and registrations sufficient to comply with current statutory requirements.

10. INDEMNITY

10.1 The Supplier agrees to indemnify the Company against:-

10.1.1 all losses, costs, damages, expenses and claims caused to and made against the Company which would not have been caused or made had the Supplier fulfilled its express or implied obligations under this Contract;

10.1.2 any claims for infringement of any patents, design right, copyright, registered design, or trade mark by reason of the use or sale of the Goods supplied (save where the same shall have been manufactured in accordance with specifications or designs supplied solely by the Company) and against all losses, costs, damages, expenses and claims which the Company may incur or have to bear or for which the Company may become liable as a result of such claims for infringement;

10.1.3 all claims in respect of royalties payable by the Supplier in respect of the Goods;

10.1.4 all claims arising out of errors and omissions in drawings, calculations, packing details or other particulars supplied by the Supplier; and

- 10.1.5 all claims made against the Company arising out of the acts and omissions of the Supplier, its employees, agents or its sub-contractors.
- 11. CONFIDENTIALITY**
- 11.1 The Seller shall keep secret all information of a secret or confidential nature (including without limitation all information relating to the customers of the Company, all manufacturing techniques or related information revealed by the Company, all information labelled as secret or confidential by the Company and all matters referred to in clause 20.2) (together the "Confidential Information") communicated to the Seller. The Seller may only disclose such Confidential Information to its employees to the extent such disclosure is necessary provided that before any such disclosure the Seller shall procure that each of its employees concerned shall be bound to it by similar obligations of confidentiality.
- 11.2 Upon any termination of this Contract the obligations of confidentiality contained in this Condition 11 shall continue in full force and effect.
- 12. SUB-CONTRACTORS**
- 12.1 The Supplier shall not without the written consent of the Company sub-contract or assign all or any part of the Order.
- 12.2 The Supplier shall remain solely responsible for the acts and omissions of any sub-contractor (whether authorised or not).
- 13. TERMINATION**
- 13.1 The Company may terminate the Contract forthwith if:-
- 13.1.1 any distress, execution or other process is levied upon the assets of the Supplier, or the Supplier has a bankruptcy order made against him or makes an arrangement or composition with his 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 (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver 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 the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier;
- 13.1.2 where the Supplier is situated outside the United Kingdom, an event analogous to an event described in Condition 13.1.1 shall occur; or
- 13.1.3 the Supplier shall commit any breach of its obligations under the contract and fail to rectify such breach within thirty (30) days of receipt of written notice from the Company requiring that breach to be remedied.
- 13.2 The Company may exercise its rights under Condition 13.1 above notwithstanding that:-
- 13.2.1 the Company has accepted all or part of the Goods or Services; or
- 13.2.2 the title in the Goods has passed to the Company.
- 13.3 Upon any termination, the Company may in its absolute discretion keep or return any of the Goods in the possession of the Company. The Company shall be liable to pay only for such of the Goods, if any, that the Company so keeps, the price being determined pro rata with respect to the total Contract price. Termination shall be without prejudice to any claim that the Company may have against the Seller arising out of this Contract or its breach by the Seller. The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 13.4 Where a defect is discovered in the Goods or Services:
- 13.4.1 which is reasonably apparent on a visual inspection, then within ninety (90) days after delivery of the Goods to the Company; or
- 13.4.2 which is not reasonably apparent on a visual inspection, then within ninety (90) days after the Company has discovered the defect in question;
- in either event the Company shall be entitled to require the Supplier to rework or replace the Goods or re-perform the Services so that the defect is not present or else the Company may by written notice, reject the Goods and terminate the Contract.
- 13.5 Where the Company exercises its right under Condition 13.4 above to require the Supplier to rework, replace or re-perform, the Supplier shall be responsible for making good with all possible speed the defect or damage or faulty workmanship as the case may be including the full replacement of the Goods where necessary together with all costs of re-delivery to the Company's site and installation and all other incidental costs and expenses incurred by the Company.
- 13.6 The rights of the Company in this Condition 14 are in addition to any that the Company may have in law.
- 14. VALUE ADDED TAX**
- The Supplier shall issue a proper tax invoice in respect of value added tax in accordance with the relevant legislation before the Company shall be required to make payment for Goods or Services supplied in accordance with the Order.
- 15. CONSUMER PROTECTION ACT 1987**
- 15.1 The Supplier warrants that all Goods supplied to the Company together with all necessary instructions, information and warnings supplied with them will be designed, manufactured and produced in such a manner as to ensure that under no circumstances could the Goods be held to be defective pursuant to Part 1 of the Consumer Protection Act 1987.
- 15.2 If the Supplier becomes aware at any time of any incidents, events or discoveries which are in any way relevant to the safe operation of Goods previously supplied, the Supplier shall without delay issue written notice of such incident, event or discovery to the Company.

15.3 The Supplier shall indemnify, reimburse and compensate the Company for all losses and damages (including costs, expenses and charges for legal action in which the Company may be involved) which the Company may incur or have to bear as a result of any claim or claims arising as a result of the Goods being adjudged defective pursuant to the provisions of Part 1 of the Consumer Protection Act 1987.

16. SEVERABILITY

If any provision of these conditions is or shall be judged by a court of competent jurisdiction void or unenforceable in whole or in part the other provisions of these conditions shall remain fully valid and enforceable and the void or unenforceable provisions shall, where appropriate, be replaced as near as may be to reflect the meaning and purpose of these conditions.

17. VARIATION

17.1 Any amendments to these conditions or the Order shall be valid and binding only where made by agreement evidenced in writing.

17.2 The Supplier shall advise the Company immediately if such amendments either prevent the specified delivery dates being met or have any other significant implication regarding the Supplier's obligations to the Company.

18. CANCELLATION

Without prejudice to any other specific provision of this Contract or any other right available to the Company, the Company shall have the right to cancel the Contract in whole or in part at any time by giving written notice to the Supplier whereupon all work under the Order (or the cancelled part) shall be discontinued and the Company shall pay to the Supplier such proportion of the Order price as may be fair and reasonable having regard to the value of work done, of the Goods previously delivered and of Services performed under the Order (including an element of profit to be calculated on a pro rata basis by reference to the net profit margin on the Contract as a whole which the Supplier can evidence to the satisfaction of the Company that the Supplier would have obtained had the Contract proceeded to completion). On such payment by the Company no further sum or sums shall be due by way of damages, loss of profits or otherwise from the Company by reason of such cancellation.

19. INSTRUCTIONS

19.1 All instructions, information and warnings supplied with the Goods shall be supplied in a form suitable for photocopying or electronic copying by the Company.

19.2 The Seller hereby permits the Company to copy those instructions, information and warnings.

20. INTELLECTUAL PROPERTY

20.1 Unless expressly agreed otherwise by the Company all designs, inventions, patents, know how, new technology and improvements made, designed or developed by the Supplier pursuant to the Supplier's provision of the Services and all confidential information generated by the Supplier pursuant to the Supplier's provision of the Services shall be the absolute property of the Company. The Supplier shall procure at no charge to the Company the execution of any and all papers reasonably requested by the Company to perfect the ownership of the same by the Company.

20.2 All intellectual property rights material, drawings, patterns, gauges, samples, specifications and other technical data which the Supplier is permitted to use or which is supplied by the Company in connection with the provision of Goods or the Services shall be and shall at all times remain the absolute property of the Company, shall be used by the Supplier solely to provide Goods or Services to the Company and shall be returned along with all copies thereof on the demand of the Company.

21. ENGLISH LAW

The parties agree that this agreement shall in all respects be governed by English law and that any disputes arising or in any way connected with the subject matter of this Agreement (whether of a contractual or tortious nature or otherwise) shall be subject to the exclusive jurisdiction of the English courts except that the Company may seek injunctive relief outside such jurisdiction.

22. THIRD PARTY RIGHTS

The provisions of the Contracts (Rights of Third Parties) Act 1999 (the "Act") shall not apply to this Agreement and this Contract shall not confer any right on a Third Party under that Act or otherwise.

23. INTERPRETATION

In this document and any Order:

23.1 the headings are for convenience only and shall not affect the interpretation of these conditions or the Order;

23.2 the use of the plural shall include the singular and the use of the singular shall include the plural;

23.3 references to the masculine, feminine or neuter genders shall include each and every gender.

24. WAIVER

Save in respect of a waiver granted in writing, the failure of the Company at any time to enforce a provision of the Contract shall not be deemed a waiver of such provision or of any other provision of the Contract or of the Company's right thereafter to enforce that or any other provision of the Contract.