

1.0 Definitions

- 1.1 "Company" shall mean Integrated Building Management Systems Limited.
1.2 "Supplier" shall mean the person(s), firm or company to whom the purchase order is addressed (or any persons acting on their behalf).
1.3 "Order" shall mean the Company's purchase order including all documents, information, conditions etc. either referenced therein or appended thereto but shall exclude any of the Supplier's items and conditions which have been referenced in accordance with clause 2.3 of these conditions.
1.4 "Goods" shall mean all products and / or services set out in the Order.
1.5 "Contract" shall mean the contract formed by the Supplier's acceptance of the Order.

2.0 Agreement

- 2.1 Notwithstanding clause 2.3 of these conditions all the provisions of the Contract between the Company and the Supplier are contained in or referred to in the Order (including these conditions).
2.2 Unless expressly agreed in writing by the Company no terms, conditions or variations put forward at any time by the Supplier shall form any part of the Contract.
2.3 Any reference that may be made to the Supplier's quotation, offer etc. within the Order shall not be deemed to signify acceptance and / or incorporation of any of the Supplier's terms and conditions into the Order.
2.4 The Order shall be deemed an offer by the Company to purchase the Goods subject to these terms and conditions and such shall be accepted and form a legally binding contract when the Supplier accepts the offer. The Supplier shall be deemed to have accepted the Order within five (5) working days from receipt or by earlier performance of the Order unless the Supplier rejects the Order in writing to the Company within such five (5) day period.

3.0 Assignment / Subletting

- 3.1 Except in respect of goods and services bought or procured in the normal course of the Supplier's business no rights or obligations under the Order shall be assigned or sub-let without first obtaining the Company's written consent.
3.2 Any consent given by the Company to the Supplier to assign or sub-let in whole or in part any of his obligations shall not relieve the Supplier of any of his responsibilities under the Contract.
3.3 The Company shall be entitled to assign in whole or in part any of its rights and obligations under the Contract without notice to the Supplier.

4.0 Quality

- 4.1 The Supplier warrants that all Goods provided pursuant to the Order are new and unused; free from defects in design, materials and workmanship; of satisfactory quality; fit for the purposes for which they are intended and comply with the Order or to all specifications, drawings, samples or other descriptions furnished or specified by the Company.
4.2 The Supplier shall ensure that the Goods comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
4.3 The Supplier shall ensure that the Goods conform with all appropriate British, EU and other international standards and specifications applicable to them and, if requested to do so by the Company, must provide evidence in support of such.
4.4 The Supplier warrants that any services he provides will be performed with a reasonable degree of care and skill and in accordance with generally accepted standards for similar services in the industry concerned and will also comply with the requirements of the Order or any other specifications or requirements specified by the Company.
4.5 The Supplier shall be liable for any and all costs that are incurred by, or levied against the Company in respect of any damages, losses and / or remedial works associated with latent defects arising from, or occurring as a result of, the use / installation of any defective Goods provided under this Contract by the Supplier.

5.0 Information

- 5.1 The Supplier shall be responsible for all errors and omissions in drawings, calculations, packing details or other particulars he supplies and approval or acceptance thereof by the Company shall not relieve the Supplier of any of his obligations under the Order; provided that such errors or omissions are not due to inaccurate information furnished in writing by the Company and that such information was not supplied subject to confirmation by the Supplier.
5.2 The Supplier shall, at his expense, provide all necessary assistance, information, and drawings as may be reasonably required by the Company to enable the successful installation, operation, performance and maintenance of the Goods.

6.0 Guarantee

- 6.1 Without prejudice to any rights or remedies the Company has in respect of the identification and rectification of latent defects and subject to any alternative guarantee arrangement agreed in writing between the Company and the Supplier the guarantee period applicable to the Goods shall be 12 months from putting into service or 24 months from delivery, whichever shall be the longer.
6.2 If the Company shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other right or remedies which the Company may have) as quickly as possible remedy such defects (whether by repair or replacement as the Company shall elect) without cost to the Company.

7.0 Right to Inspect

- 7.1 The Company, any third party it appoints on its behalf, its customer and / or any other organisations nominated by the Company, shall have the right upon prior notice to carry out any inspections, tests and assessments it wishes on the Goods (and any processes carried out in relation to them including, but not limited to, quality assurance systems and procedures) at the Supplier's premises (the Supplier shall procure equivalent rights for the Company in relation to the premises of any of its subcontractors and / or suppliers where the Goods are manufactured and / or stored elsewhere).
7.2 Any inspections, tests, approvals or acceptance given by, or on behalf of, the Company in relation to the Goods shall not relieve the Supplier from his obligations or liabilities under the Contract.

8.0 Rejection of Goods

- 8.1 The Company may reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted any Goods until the Company has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

9.0 Delivery

- 9.1 The time of delivery for the Goods shall be of the essence and failure to deliver within the time promised or specified shall enable the Company (at its discretion) to release itself from any obligation to accept and pay for the Goods and / or to cancel all or part of the Order, in either case without prejudice to its other rights and remedies.
9.2 Each and every delivery shall be accompanied by an advice note which must contain the Company's purchase order number, a description of the Goods, a statement of their quantity and the details of any Goods as may remain outstanding for delivery pursuant to the Order.
9.3 At no cost to the Company the Supplier will adequately package and label the Goods so as to protect them against damage or deterioration in transit and / or storage. The Supplier shall ensure that packaging complies with all relevant legislative requirements, including those pertaining to environmental and occupational health and safety standards. Wherever practical the Supplier should use minimal packaging, recyclable packaging and recycled packaging materials.
9.4 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier has clearly stipulated in writing to the Company that the packaging must be returned, in which case the Supplier will be responsible for any and all risks and costs associated with its return.
9.5 Without prejudice to any of his other obligations under the Contract the Supplier shall promptly advise of any difficulty or delay actual or expected in his performance of the Order together with details of his proposed remedial action.
9.6 The Company's acceptance of delivery on a delivery note or similar document shall not constitute acceptance of the Goods and the Company retains the right to reject any of the Goods until they have been fully inspected by it.
9.7 If the Supplier is providing mechanical offloading they must ensure that they comply with current Health and Safety legislation including "The Provision and Use of Work Equipment Regulations 1998" (PUWER 98) and "The Lifting Operations and Lifting Equipment Regulations 1998" (LOLER 98). Certifying documentation must be provided to the Company's site management upon arrival on site.

10.0 Property and Risk

- 10.1 Without prejudice to any right of rejection which may accrue to the Company and unless otherwise stated in the Order title to the Goods shall pass to the Company upon delivery or any payment being made against this Order by the Company.
10.2 Any Goods and / or items held by the Supplier which the Company has paid for in full or part or which the Company may have loaned, bailed, consigned or supplied to the Supplier for the execution of the Order will be at the Supplier's risk until delivered to the Company. The Supplier will be fully liable for any damage caused to such Goods and / or items whilst in his possession. The Supplier will ensure that such Goods and / or items are at all times identified as the property of the Company and do not become the subject of any encumbrance.

11.0 Price / Payment

- 11.1 Unless otherwise stated in the Order or any valid amendment thereof made in accordance with these conditions, prices are fixed and firm for the duration of the Order, are fully inclusive of all duties, packaging, carriage, insurance and delivery charges and are not subject to escalation or additions.
11.2 Payment will be made at the end of the month following the month in which the invoice is received by the Company unless any specific terms are stated for the Order or have subsequently been agreed in writing by the Company.
11.3 Unless agreed in writing the Supplier shall only be entitled to submit an invoice for the Goods once delivery has been completed. A separate invoice must be rendered in duplicate for each individual consignment of Goods delivered and must be sent to the address stated on the front of the Purchase Order. Each invoice must clearly state the Company's Order number together with the description, quantity and delivery location of the Goods supplied. The Company shall not be under any obligation to pay any invoice which does not comply with the requirements of this clause.
11.4 The Company (including Bowmer and Kirkland Limited and/or subsidiary companies) shall be entitled to set-off against any sum owing to the Supplier under this Order all or any amounts due, any other Order and / or contract or generally at law, irrespective of whether there is a shortfall in the amount available to set off under this Order.
11.5 No payment shall constitute any admission by the Company as to proper performance by the Supplier of his obligation under this Contract.

12.0 Variation

- 12.1 The Company has the right to amend quantities, specifications and scheduled times or deliveries by issuing a written amendment to the Supplier with which the Supplier shall comply. The Supplier shall advise the Company forthwith if any proposed amendments either prevent the specified time for delivery being met or have any other material implication in regard to the Suppliers obligations to the Company and if appropriate the Company shall allow a reasonable adjustment to the price and / or time for delivery.

13.0 Insurance / Indemnity

- 13.1 The Supplier shall at all times insure and keep himself adequately insured with a reputable insurance company against all insurable liability under the Contract and shall, on request, provide the Company with evidence as to the existence and sufficiency of such insurance.
13.2 The Supplier shall indemnify, in full and on demand, and hold the Company harmless from all claims and all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses, any handling, labour or administration charges and the cost of carrying out any remedial work including that associated with the replacement of defective Goods) awarded against or incurred or paid by the Company as a result of or in connection with any act, omission, breach, negligent performance, failure or delay in performance of the Contract by the Supplier, his employees, agents or subcontractors.

14.0 Patents / Intellectual Property Rights

- 14.1 The Supplier will indemnify the Company against all actions, suits, claims, demands, losses, charges, costs and expenses which the Company may suffer or incur as a result of any claims for infringement or alleged infringement of any patent registered, design, design right, trade mark, copyright, confidentiality and any other intellectual or industrial property rights arising by reason of the use or sale of the Goods (except to the extent that the Goods are made up in accordance with design information furnished by the Company).

15.0 Cancellation

- 15.1 Without prejudice to any other rights and remedies the Company shall be entitled to cancel the Order (in whole or in part) at any time and for any reason by giving notice to the Supplier whereupon all work pursuant to the Order which is thereby cancelled shall be discontinued forthwith. The Company's liability shall be limited to paying the Supplier fair and reasonable compensation for work in progress at the time of cancellation but such compensation shall not include damage, anticipated loss of profits or any consequential loss. The amount payable to the Supplier in compensation under this clause shall not exceed the value of the Goods that constitute the work in progress.

16.0 Remedies

- 16.1 Without prejudice to any other rights or remedies the Company may have, in case of early, late, partial, excessive, defective or otherwise incorrect delivery or performance or any other failure by the Supplier to comply with the Contract, the Company shall be entitled, at its discretion, to exercise some, all or any of the following remedies whether or not any part of the Goods have previously been accepted or paid for by the Company:
- 16.1.1 to rescind the Order;
 - 16.1.2 to reject such Goods and, where any Goods so rejected are the same as other Goods supplied by the Supplier which are held by the Company at any location, to reject those Goods also on the basis that a full refund for any Goods so returned which have already been paid for by the Company shall be paid forthwith by the Supplier;
 - 16.1.3 to require the Supplier at his expense to immediately supply in substitution for any rejected Goods, Goods which conform to the Contract;
 - 16.1.4 at the Supplier's expense to carry out or have carried out any work which the Company considers necessary to ensure any Goods conform to the Contract;
 - 16.1.5 to purchase Goods elsewhere as nearly as practicable to the same specifications and conditions as circumstances shall permit and recover from the Supplier any additional expenses thereby incurred together with the purchase price if previously paid, providing that before exercising such right to purchase elsewhere the Company shall give the Supplier a reasonable opportunity to replace rejected Goods in accordance with clause 16.1.3; and / or
 - 16.1.6 to claim damages for any other costs, losses or expenses incurred by the Company which are in any way attributable to the Supplier's failure to carry out his obligations under the Contract.

17.0 General

- 17.1 These conditions and the formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by and construed in accordance with English Law and the parties hereby irrevocably submit to the jurisdiction of the English courts.
17.2 If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect the other provisions of the Contract which shall remain in full force and effect.
17.3 Headings appear for convenience only and shall not affect the construction of these conditions.
17.4 No failure or delay by the Company to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. In addition no single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
17.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
17.6 Any reference in the Order to one gender includes a reference to all other genders and a reference to the singular includes a reference to the plural and vice versa.

18.0 Environment and Sustainability

- 18.1 As a minimum requirement the Supplier is expected to operate within the parameters and spirit of the Company's Environmental policy, a copy of which can be found on the Company's website at www.integratedbms.co.uk.