



BMT Commercial USA, Inc.
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CONDITIONS OF PURCHASE

1. GENERAL

A task specific separate agreement might have been signed between the Company and the Contractor which excludes all other terms and conditions (including either explicitly, or by implication, these conditions). Otherwise, all orders given by or on behalf of the Company for the Purchased Items defined below are subject to these Conditions.

The following definitions shall apply:

The terms defined in the Particulars as set out in the Letter of Agreement.

"Company" shall mean BMT Commercial USA, Inc.;

"Confidential Information" shall mean confidential and/or proprietary technical, financial or commercial information or trade secrets, including but not limited to designs, drawings, specifications, equipment, models, samples, computer software and knowhow, communicated by the Company to the Contractor;

"Contractor" shall mean the supplier or seller delivering the Purchased Items;

"Contractor's Personnel" shall mean the Contractor's employees, agents, consultants and sub-contractors or any servant of any of them;

"Contract" shall mean and include all obligations arising from the acceptance of the Purchase Order on the face hereof and any addition or variation agreed in writing;

"Purchased Items" shall mean all goods, services, materials, works or subscriptions of any kind, the hiring of vehicles and/or IT hardware or software (whether any of the aforesaid are to be delivered physically to the Company or through any form of media);

"Purchase Order" shall mean the details on page 1 hereto together with these conditions of purchase;

"Work" shall mean the work performed to deliver the Purchased Items to the Company.

2. ACCEPTANCE OF PURCHASE ORDER

2.1. The Contractor shall accept the Purchase Order by signing and returning the Purchase Order to the Company by email and or signing the Letter of Agreement. If the Contractor fails to do this within 10 working days of the date of Purchase Order, the Contractor shall be deemed to have accepted the Purchase Order as soon as it commences Work.

2.2. Further to the Contractor's acceptance of the Purchase Order in accordance with clause 2.1, the Purchase Order shall constitute the Contract between the Contractor and the Company.

3. DUE CARE

3.1. The Contractor shall provide the Purchased Items in accordance with the Purchase Order and or Letter of Agreement.

3.2. The Contractor shall exercise all reasonable care and skill in the supply, delivery and/or performance of the Purchased Items.

3.3. The Contractor shall take special care when working on the Company's or the Company's client's premises for the safety of the Contractor's, Company's and Company's client's personnel and guests.

4. WORKING CONDITIONS, RULES AND STATUTORY OBLIGATIONS

4.1. The Contractor, and Contractor Personnel whilst engaged upon work at the premises of the Company shall observe and be bound by the rules, regulations and procedures at those premises which are supplied to or are available to them. These are available from the Company at the request of the Contractor. They shall also fulfil, comply with and observe all statutory obligations, orders, byelaws and other requirements applicable to those premises.

4.2. The Contractor shall, in particular itself, comply and shall ensure that Contractor's Personnel comply with the Health and Safety at Work Act, with all statutory safety regulations, and with all site safety and other instructions, notices and the like. Contractor's Personnel shall only visit those parts of the relevant site which it is safe for them to visit, and only use machinery which it is safe for them to use; bearing in mind their particular experience and knowledge.

4.3. The Contractor shall comply with all relevant policies as supplied from the Company from time.

5. PROGRESS REPORTS

5.1. The Company shall be entitled to call, from time to time, for progress reports from the Contractor.

6. INSPECTION AND RIGHT OF ACCESS

6.1. The Company, their customers, or their customers' representatives, shall be entitled to a right of access to the Contractor's (and its subcontractors') premises at all reasonable times. The reason for this is to check progress as well as to carry out or witness tests or procedures. Reasonable assistance will be given to the Company for inspection and right of access to the Contractor's premises.

7. DATES AND FAILURE TO MEET THEM

7.1. The Contractor shall comply with all delivery dates as set out in the Particulars. Time shall be of the essence in the delivery of the goods and or services. If no timescales are specified, the goods and services shall be delivered as soon as practicable and in agreement with the Company.

7.2. If the Contractor fails to fulfil or complete its obligations by the agreed Date, then the Contractor shall indemnify the Company against all and any additional costs or expenses incurred by the Company. In such circumstances the Company shall have the choice:

a) of requiring the Contractor to immediately correct the Purchased Items (where this is possible) at the Contractor's cost, and within the timescale specified by the Company, (with the Contractor paying to the Company the amount (if any) required over and above the correction to compensate the Company for its losses) OR

b) of terminating this Purchase Order (where the Company is legally able to do so) and requiring the Contractor to pay for the costs of third-party supply of the equivalent of the Purchased Items and/or for any other losses suffered by the Company.

8. OWNERSHIP OF MATERIALS AND WORK IN PROGRESS

8.1. Where the Contract price is payable in instalments and the first instalment has been paid, the property in all Purchased Items shall vest in the Company. Where the price is not payable in instalments, property in the Purchased Items shall pass to the Company on whichever shall occur first of (a) their delivery to the Company and (b) payment of the price. Notwithstanding any such passing of Purchased Items the Contractor shall remain responsible for all risks in the Purchased Items until they are delivered to the Company.

9. ACCEPTANCE OF PURCHASED ITEMS

9.1. The Company shall have the right to inspect the Purchased Items after delivery and acceptance shall take place if the Company subsequently confirms that the Purchased Items are satisfactory and comply with the Purchase Order. If no inspection is made, the Purchased Items shall be accepted on the earlier of (a) when they have been taken into final use by the Company or the Company's end user or (b) 20 working days after delivery in accordance with clause 7 above.

10. GUARANTEE AND DEFECTS LIABILITY

10.1. If any fault of design, materials, workmanship or computer software error shall occur within a period of:

(i) 12 months of their delivery in the case of goods; or

(ii) 12 months of completion in the case of services; or

(iii) 12 months of the date upon which any machinery or structure for the construction of the Purchased Items has been delivered by the Company;

or

(iv) 3 months of the delivery of the relevant IT software in the case of software error

(whichever is the later) due to the design, goods, materials, works, services or IT software not being in accordance with the Contract, then the Purchased Items shall, at the option of the Company, either be replaced or repaired at the expense of the Contractor. Any Purchased Items replaced or repaired shall be guaranteed by the Contractor for a further 12 months (or a further 3 months in the case of IT Software).

11. INDEMNITY

11.1. The Contractor shall indemnify and hold harmless the Company in respect of:

- (a) any and all loss, damage or expenses suffered by the Company in consequence of any negligence or breach of statutory or other duty on the part of the Contractor, or Contractor's Personnel in any way arising out of or connected with the performance of the Contractor;
- (b) any defect in or incorrect assembly of any goods or works supplied or executed under or for the purpose of performing the Contract notwithstanding the same may have been inspected and/or accepted by the Company;
- (c) all claims made against the Company by any third party including any servant or the personal representatives or dependants of any servant of the Company for any such negligence or breach of duty or defect or incorrectness referred to in 7.3 (a), and 7(b) above;
- (d) all claims made against the Company by any Contractor's Personnel or by the personal representatives or dependants of such Contractor's Personnel for or in respect of the death of or any damage, loss or personal injury incurred or suffered by Contractor's Personnel arising from any cause whatever including fault, negligence or breach of duty on the part of the Company or of any agent or servant of the Company;
- (e) all legal and other costs however incurred by the Company in connection with any such loss, damage or claim as aforesaid; and the Contractor shall hold adequate insurance to cover these indemnities.

11.2. The Contractor shall hold adequate insurance to cover these indemnities insofar as such indemnities are capable of being insured and provided that insurance for these indemnities shall be available at reasonable commercial rates. Irrespective of whether insurance is obtainable, or whether it cannot be obtained at reasonable commercial rates, this shall not detract from the Contractor's responsibility in respect of the aforesaid provisions.

12. SUSPENSION

12.1. The Company may suspend the Work at any time by giving reasonable notice in writing to the Contractor. In the event that the Contractor is in breach of this Contract then the Company will not pay any compensation. In the event the suspension is for the Company's convenience, then the Company shall pay to the Contractor any reasonable substantiated additional costs incurred by the Contractor caused by the suspension. At the end of any suspension the Contractor will promptly recommence the Work.

13. TERMINATION IN THE EVENT OF BREACH AND IN OTHER CIRCUMSTANCES

13.1. If the Contractor shall commit any breach of Contract and shall fail to remedy the same within 10 working days of being given written notice by the Company to do so, the Company may cancel this Contract by notice in writing to the Contractor. If a receiving order is made against the Contractor, or if the Contractor shall enter into administration, or into an arrangement or composition with its creditors, or if the Contractor shall go into liquidation voluntarily or otherwise (except for purposes of amalgamation or reconstruction), or if a receiver or manager of the Contractor shall be appointed, then the Company may cancel this Contract forthwith without any compensation being payable to the Contractor. The exercise of this right of cancellation shall be in addition to any other right of action or remedy of the Company.

13.2. The Company also shall have the option to terminate this Contract immediately, without any compensation being payable to the Contractor, if the Company believes that its interests will be or are likely to be prejudiced by the Contractor (being a company or a partnership) ceasing to be controlled by its current owners, or if the Contractor is a sole trader, being sold to a third party.

14. RETURN OF COMPANY'S PROPERTY ON TERMINATION

14.1. On termination the Contractor shall immediately return to the Company all documents, specifications and property (including any portable computers, working papers, free issue material and free issue goods which are surplus to requirements and source code belonging to the Company) which are in his possession or under his control. The Contractor shall only retain a copy of such working papers as are necessary for archive and audit purposes. The Contractor shall also, at the request of the Company, delete any electronic copies of working papers upon termination of this Contract.

15. FORCE MAJEURE

15.1. If, and in so far as, and for so long as, the performance of the Contract by the Contractor is delayed or prevented by circumstances beyond the Contractor's reasonable control and where the impact could not have been avoided or minimised through the Contractor having in place a professional business continuity plan then the Contractor shall be excused performance of its obligations hereunder. Under such circumstances, the Contractor shall be entitled to payment to the extent that the Contract has been performed up to the date when such circumstances began. Similarly, if the Company is unable, due to circumstances beyond its control, to give the Contractor access to a relevant site or is unable due to other circumstances beyond its reasonable control to perform any of its other obligations hereunder, then for so long as such circumstances continue it shall be excused its performance of its obligations.

15.2. In the event that the Company's client terminates any overarching contract between the Company's client and the Company, then the Company shall be entitled to terminate this Contract by reasonable notice and the Contractor shall be entitled to payment for its obligations which have been properly performed up to the date of termination.

16. INVOICING, PAYMENT TERMS & EXPENSES

16.1. Invoices must be submitted in accordance with the Contractor's proposal or offer, subject to the terms thereof being accepted by the Company. In the absence of a proposal or offer, invoices must be submitted monthly in arrears or on delivery or completion of the Purchased Items as required by the Company.

16.2. Unless otherwise agreed invoices will be payable within 60 calendar days of the date of the invoice.

16.3. Unless otherwise agreed, the price is exclusive of VAT, which may be charged at the prevailing rate in addition where applicable.

16.4. The Contractor is not authorised to incur any expense on behalf of the Company; expenses will only be paid where (a) this has been agreed in advance, and (b) the individual item of expenditure has been approved in advance by the Company.

17. VARIATIONS

17.1. The Company may alter the description or the requirement for the Purchased Items. Any changes that may be required to the description for the Purchased Items or to any requirements including the commencements date, delivery date, completion date or the price shall be agreed in writing.

In the absence of such agreement (within 5 working days) the Company reserves the right to terminate the Contract.

17.2. The Company shall not be liable to pay or be responsible for any additions or variations to the Contract proposed or made by the Contractor, unless the Company confirms the same in writing and agrees to:

- (a) any consequential addition to or abatement from the purchase price and/or
- (b) any consequential postponement of the delivery or completion date.

18. INTELLECTUAL PROPERTY

18.1. Any pre-existing Intellectual Property rights which the Contractor can show were in existence prior to entering into this Contract, unless otherwise agreed, shall continue to belong in entirety to the Contractor. All Intellectual Property rights in any Work originating or developed by the Contractor during and for the purposes of this Contract ("foreground") shall become the property of the Company and the Contractor shall not make use of such foreground Intellectual Property rights during or after the termination of its engagement, except in the proper performance of its duties hereunder. The Contractor shall take such action as the Company may require to assign its rights in the foreground Intellectual Property and if the Company so directs shall apply for, register and maintain patents, copyright, registered designs and any other modes of protection, all at the request and expense and in the name of the Company.

18.2. The Contractor agrees to indemnify the Company against all costs, expenses and damages which might arise as a result of the Company using or exploiting the foreground Intellectual Property Rights which the Contractor develops in performance of his duties hereunder or which the Contractor makes available to the Company.

18.3. For the purpose of this Contract Intellectual Property shall include inventions, designs, methods, processes, computer software, manufacturing data, reports and other works, together with all know-how, proprietary rights and information, whether patented or otherwise registered or not and whether or not susceptible to patent, copyright, registered design or like protection. This clause shall survive termination of this Contract.

19. CONFIDENTIAL INFORMATION

19.1. Except to the extent that it may have received prior written permission of the Company to do so, the Contractor shall not (except in the proper performance of its duties hereunder) during or after termination of this Contract make use of, publish or disclose to any person whatsoever any confidential information relating to the Company or its clients or its business or its trade secrets of which the Contractor has or shall hereafter become possessed. The Contractor acknowledges that due to the special nature of the Company's business and the importance to it of its trade secrets, confidential information and intellectual property, this widely-defined obligation is reasonable. This clause shall survive termination of this Contract.

20. PACKING AND CONTAINERS

20.1. All Purchased Items requiring physical delivery, and which are customarily packed or put into containers, must be properly and securely packed at the Contractor's expense prior to delivery. The Contractor will be responsible for damage arising as a result of improper packing. If required in writing prior to delivery, the Company will use its best endeavours to preserve packaging materials or containers for collection by and at the Contractor's expense which must be affected promptly after written request by the Company.

21. DANGEROUS GOODS

21.1. Any Purchased Items which are hazardous shall be marked with the appropriate international danger symbols and the name of the goods or materials in English. The Contractor shall observe United States and International agreements relating to the packing, labelling and carriage of hazardous goods.

22. PLANT AND LABOUR

22.1. If, at the express or implied request of the Contractor (or his sub-contractor or agent or any employee of them), the Company lends plant or provides labour then the Contractor shall indemnify the Company for all loss, damage, claims, demands or liability and all costs or expenses incurred in connection therewith arising from any act, neglect, default or breach of statutory or other duty on the part of the Company (or any servant or agent of the Company) in the course of such lending or providing of labour.

22.2. The Contractor shall be responsible for the insurance, preservation and safe custody of his own plant, equipment and stores at all times.

22.3. Any cleaning up consequent upon Contractor's Work shall be carried out by the Contractor at the Contractor's expense.

23. INSURANCE

23.1. The Contractor shall carry all insurance required by law and insurance to cover the work completed by the Contractor e.g. for professional services, Professional Indemnity cover of at least \$500,000. For goods and services provision, public and product liability of at least \$1m.

23.2. Insurance shall also be effected to cover any goods or materials belonging to the Company (including any surplus free issue goods or material) whilst they are in the possession of the Contractor or under the Contractor's control.

24. NO RIGHT TO SUB-LET OR SUB-CONTRACT

24.1. The Contractor shall not, without the prior written consent of the Company (not to be unreasonably withheld), sub-let the Contract or any part thereof, or make any sub-contract with any third party for the execution of any part of the Purchased Items.

25. ASSIGNMENT

25.1. The Contractor shall not assign the whole, or any part of, the Contract without the prior written consent of the Company.

26. BRIBERY & CORRUPTION

26.1. The Contractor shall comply with any legislation intended to eliminate or prevent bribery and corruption, including, for the avoidance of doubt, the Bribery Act 2010.

27. APPLICABLE LAW AND JURISDICTION

27.1. The Contract shall in all respects be construed and operate as a Contract made in The United States and shall be subject to United States law and subject to the exclusive jurisdiction of United States courts.