

## **CONDITIONS OF PURCHASE**

### **F.P. McCann Limited**

#### **1 Interpretation**

##### **1.1** In these Conditions:

"Company" means F.P. McCann Limited whose Head Office is situate at Knockloughrim Quarry, 3 Drumard Road, Magherafelt, BT45 8QA, Northern Ireland;

"Conditions" means the standard conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the parties;

"Contract" means any contract between the Company and the Supplier for the purchase of Goods and/or Services in accordance with these Conditions;

"Deliverables" means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

"Goods" means the goods which the Supplier is to supply in accordance with these Conditions;

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Order" means any order from the Company to the Supplier for the supply of Goods and/or Services;

"Services" means the services, including without limitation any Deliverables, which the Supplier is to supply under the Contract as set out in the Specification;

"Specification" means the Company's specifications or stipulated requirements for the Goods and/or Services notified to the Supplier;

"Supplier" means the person, firm or company with whom the Order is placed.

1.2 The headings in these Conditions are for convenience only and shall not affect interpretation.

1.3 A reference in these Conditions to writing or written includes faxes and e-mails.

1.4 A references in these Conditions to a month means a calendar month.

#### **2 Orders**

2.1 Orders placed by the Company are placed on these Conditions to the exclusion of all other conditions including any implied by trade, custom, practice or course of dealing and any the Supplier purports to apply to any quotation, order acknowledgement, delivery note, invoice or other document or which might otherwise have been relied upon by the Supplier whether in negotiation or at any stage in the dealings between the parties in respect of any Goods and/or Services. Any Contract (whether, for example, by an exchange of correspondence or over the telephone) shall be subject to these Conditions.

2.2 In the event of inconsistency between these Conditions and any other apparent Contract term, these Conditions shall apply except where a change to these Conditions is expressly agreed to in writing and signed by an authorised representative of the Company.

2.3 Each Order shall be deemed to be an offer by the Company to purchase Goods and/or Services subject to these Conditions.

2.4 The Order shall be deemed to be accepted on the earlier of:  
(a) the Supplier issuing written acceptance of the Order; or  
(b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence.

#### **3 Supply of Goods and performance of Services**

##### **3.1** The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Company, expressly or by implication, and in this respect the Company relies on the Supplier's skill and judgment;
- (c) be free from defects in design, materials and workmanship and remain so for 24 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- (e) be packed and secured in such manner as to enable them to reach their destination in good condition.

3.2 The Company shall have the right to inspect and test the Goods at any time before delivery.

3.3 If following such inspection or testing the Company considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Company shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.4 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Company shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

##### **3.5** In providing the Services, the Supplier shall:

- (a) co-operate with the Company in all matters relating to the Services, and comply with all instructions of the Company;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Company;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Company, will be free from defects in workmanship, installation and design;
- (g) observe all health and safety rules and regulations and any other security requirements that apply at any of the Company's premises.

#### **4 Prices**

4.1 The price of Goods and/or Services shall be the price stated in the Order. The price shall not be altered by the Supplier prior to delivery.

4.2 The price of Goods shall be inclusive of all packing, packaging, labelling, insurance, delivery costs, and all other costs incurred by the Supplier, unless stated otherwise in the Order.

4.3 The price of the Services shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Company, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

4.4 If at any time after the placing of an order any duty or tax of any kind whatsoever shall be levied by the Government or other authority, or any duty or tax in existence at the date of placing of the order shall be increased and such duty or tax or

increased duty or tax shall be payable by the Supplier, the amount of such duty or tax or the increase in duty or tax, as the case may be, shall be borne by the Supplier.

- 4.5 The price is inclusive of any applicable insurance, customs and Value Added Tax (unless stated otherwise in the Order) and all other applicable taxes or duties.

## **5 Terms of Payment**

- 5.1 Unless otherwise agreed, the Company will pay the price of Goods and/or Services to the Supplier's account within 45 days after the end of the month of the later of completion of delivery of the Goods and/or Services and receipt by the Company of a valid invoice and statement of account. Time for payment is not of the essence.
- 5.2 The amount due will be net of all settlement discounts, bulk payment discounts, and the like granted by the Supplier.
- 5.3 If the Company fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of three per cent per annum above the base rate for the time being of Barclays Bank Plc accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Company disputes in good faith.
- 5.4 If any sums are due to the Company from the Supplier, under the Contract or any other contract, the Company may, without notice, set-off such sums against any payments due to the Supplier from the Company under or in relation to the Contract or any other contract. Any such exercise of the right to set-off by the Company shall not constitute a repudiatory breach of contract.

## **6 Delivery**

- 6.1 Time of delivery is of the essence of the Contract. If the Supplier delivers later than the time stated for delivery in the Contract, the Company may, at its sole discretion, determine the Contract and refuse to take delivery of the Goods or accept performance of the Services, or may choose to accept late delivery. In either of these circumstances, the Company will be entitled to compensation under clause 10 hereof.
- 6.2 Any time named by the Company for delivery shall mean the time of delivery and off-loading at the site address stated in the Order. Where an Order refers to a date but not a time, delivery will be made during the Company's normal business hours on the date specified. Unless otherwise stated in the Order, the Supplier will be responsible for off-loading.
- 6.3 The Company shall be under no obligation to accept delivery before the specified delivery time, but may choose to do so at its sole discretion.
- 6.4 Each delivery shall be accompanied by a delivery note stating the Order reference and quantity and type of Goods delivered.
- 6.5 The Company shall not be obliged to accept quantities or types of Goods which vary from those shown in the Order. The Supplier shall not deliver the Goods in instalments without the Company's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Company to the remedies set out in clause 8.1.
- 6.6 The Company may at any time cancel any Order in whole or in part or delay the delivery of Goods without incurring any liability to the Supplier.

## **7 Acceptance.**

- 7.1 The Company shall not be deemed to have accepted any Goods and/or Services until the Company has had a reasonable time to inspect the Goods and /or Services following delivery and/or performance or after any latent defect has become apparent of at least 7 days after delivery of the Goods and/or Services or discovery of any latent defect.
- 7.2 The Company shall not be obliged to accept delivery of Goods and / or Services that do not comply with the Specification. The Company may determine the Contract if the Supplier has not delivered Goods and/or Services complying with the Specification by the time stated for delivery in the Contract. If such circumstances arise, the Company will be entitled to compensation under clause 10 hereof.

## **8 Remedies**

- 8.1 Without prejudice to the Company's right to determine and without limiting its other rights and remedies, where Goods or Services are defective or do not otherwise comply with the

undertakings set out in clauses 3.1 and 3.5, then the Company shall have one or more of the following rights, whether or not it has accepted the Goods and/or Services:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (b) to reject the Services (in whole or in part);
- (c) to require the Supplier to replace the Goods or re-perform the Services in which case the Supplier will expedite any such replacement or re-performance.
- (d) to refuse to accept any subsequent delivery of the Goods or performance of the Services which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Company in obtaining substitute goods or services from a third party;
- (f) to recover compensation under clause 10 hereof.
- 8.2 These Conditions shall extend to any substituted or remedial services and/or replacement goods or services supplied by the Supplier.
- 8.3 The Companies rights under the Contract are in addition to its rights and remedies implied by state and common law.

## **9 Title and Risk**

- 9.1 The Supplier shall only supply Goods to which he has clear and unencumbered title.
- 9.2 Title and risk shall remain with the Supplier until the Goods are delivered in accordance with the Contract. Subject to the Company's right to reject Goods, as provided herein, under law or otherwise, title and risk shall pass to the Company on delivery.
- 9.3 If for any reason howsoever arising the Goods are in the possession of the Supplier whilst title therein has vested in the Company, the Supplier's right to possession of the Goods shall terminate immediately if:
- (a) the Supplier has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any Act 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 and/or manager, administrator or administrative receiver appointed (either in court or otherwise) of its undertaking or any part thereof, 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 Company; or
- (b) the Supplier suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against the Supplier suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under the Contract or any other contract between the Company and the Supplier, or is unable to pay its debts as defined by the Insolvency (Northern Ireland) Order 1989 (or any equivalent legislation applicable to the Company)

and the Supplier grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where Goods are or may be stored in order to inspect them, or, where the Supplier's right to possession has terminated, to uplift them.

## **10 Indemnity**

- 10.1 The Supplier shall keep the Company indemnified in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company as a result of or in connection with:
- (a) any claim made against the Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

- (b) any claim made against the Company by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;
- (c) any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;
- (d) any steps taken by the Company to avoid, mitigate or settle any potential claim or liability from a third party resulting from the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- (e) the exercise by the Company of any remedy granted by these Conditions.

10.2 The indemnities provided by this clause shall apply whether or not the Company has been negligent or at fault.

10.3 This clause 10 shall survive termination of the Contract.

## **11 Termination**

11.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing of the breach;
- (b) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts or as having no reasonable prospect of so doing;
- (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (e) the Supplier (being an individual) is the subject of a bankruptcy petition order;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (h) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(b) to clause 12.1(i) (inclusive); or
- (k) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business.

## **12 Assignment**

12.1 The Supplier shall not be entitled to assign the Contract or any part of it without the Company's prior written consent.

12.2 The Company may assign the Contract or any part of it to any person, firm or company.

## **13 Notice**

13.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

## **14 Waiver**

14.1 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Company will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

## **15 Third Party Rights**

15.1 Neither the Company nor the Supplier intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

## **16 No Partnership**

16.1 Nothing in these Conditions is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

## **17 Applicable Law and Jurisdiction**

17.1 These Conditions shall be governed by and construed in accordance with the law of Northern Ireland and the Northern Ireland Courts shall have exclusive jurisdiction over all differences and disputes which shall arise between the Company and the Supplier.