

# LIANCO LTD

## CONDITIONS OF PURCHASE

### 1. Definitions

For the purpose of these conditions, "the Company" shall mean Lianco Limited it's associated companies and subsidiaries and "The Supplier" shall mean the person, firm, corporation to whom this purchase order is addressed. The term "goods" shall mean the articles, materials, supplied, items and/or services to be produced and furnished by the Supplier hereunder.

### 2. Acceptance

2.1 The Company shall not be liable for any order or commitment unless it is issued or confirmed on the Company's purchase order form signed by a representative of the Company.

2.2 Delivery or furnishing of any goods, or services, under this purchase order, or a definite and reasonable expression of acceptance or written confirmation sent within a reasonable time, or the acceptance of, or action upon, any release for manufacture or delivery issued by the Supplier shall, unless otherwise herein provided, constitute acceptance by the Supplier of this purchase order subject to all it's terms and conditions.

### 3. Variation

This purchase order contains the complete, final and exclusive agreement between the Company and the Supplier, the terms herein shall have precedence over any terms appearing on any quotation, acceptance form, delivery form or any other documents emanating from the Supplier, and no course of dealing or usage of trade or actual course of performance shall be relevant to explain or supplement any term used herein. No modification of waiver of, revision of or addition to the terms and conditions hereof shall be binding upon the Company unless made in writing and signed by the Company's authorised representative. Any terms or conditions stated by the Supplier which are in conflict with the terms and conditions stated by the Company are hereby expressly waived.

### 4. Warranty

The Supplier warrants all goods furnished hereunder (irrespective of whether engineering design data or information has been furnished, reviewed or approved by the Company) to be of the best quality (unless otherwise authorised by the Company) to be free from faulty design (to the extent such design is not furnished by the Company), workmanship and material, and to be of sufficient size and capacity and of proper materials so as to fulfill in all respects all of the Company's requirements for the period ending on either (i) two (2) years from the date when the Company's Products (into, by or with which such goods are incorporated, combined or driven) are placed in operation or (ii) twenty-four (24) months from the date of delivery of such products, whichever is later. The foregoing guarantees shall inure for the benefit of the Company it's successors, assigns and customers.

### 5. Inspection and Testing

5.1 The Company's Inspector or Representative and any Inspector or Representative of the Company's customer or the agent thereof, or of any government department concerned, shall be entitled on the Company's authority to inspect or test the goods which are the subject of the order at any reasonable time at the Supplier's facilities or at the facilities of any sub-contractor or assignee.

5.2 If specified by the Company, the Supplier will give adequate notice of tests which the Company is entitled to attend and will provide the Company with such test certificates as the Company or his customer may reasonably require. Such inspection does not relieve the Supplier of any liability, nor does it imply acceptance by the Company, of the goods which are the subject of the order.

### 6. Delivery/Transport/Packing

6.1 Unless otherwise agreed in writing, the delivery date specified by the Company shall be of the essence. No concession with respect to delay in delivery despatch or completion shall be construed as a waiver of the Company's rights and remedies unless specifically agreed in writing.

6.2 All goods will be delivered to the Company's premises stated on this purchase order or at such other place as this purchase order specifies.

6.3 All goods supplied against the purchase order must be properly protected against damage and deterioration in transit and delivered, carriage paid, in accordance with the Company's instructions (if given) and must bear the description, the quantity of the contents and the purchase order number on the packages. Delivery shall be routed in accordance with the Company's instructions and the Supplier shall reimburse the Company for all expenses incurred by the Company as a result of packing, marking or routing which is improper or is not in accordance with the Company's instructions.

6.4 Unless otherwise provided herein and except to the extent included in the purchase price, no charge shall be made by the Supplier for containers, crating, boxing, dunnage, drayage or storage.

6.5 The Company may refuse acceptance of goods delivered in excess of quantities ordered and assumes no obligation for goods delivered in excess of the quantity ordered hereunder and not accepted by the Company. Deliveries in excess of the quantity ordered hereunder and not accepted by the Company may be returned to the Supplier, and the Supplier shall pay the Company for all handling, storage and transportation expenses incurred in connection with such deliveries, or, at the Company's discretion, the Company may set off any amount paid by it for handling, storage and transportation expenses incurred in connection with such deliveries against any amount due and retained by the Company for Goods supplied under this Purchase order.

6.6 The Supplier shall procure insurance from a bonded insurance company covering the goods during delivery in the full amount of the purchase price under this purchase order, payable to the party bearing the risk of loss at time of injury to said goods.

### 7. Documentation

The Supplier will provide the Company free of charge with all working drawings, operating instructions, plans, specifications, safety instructions and information reasonably necessary to enable the Company to use the goods to their intended purpose and with all such certificates of origin, quantity, quality, compliance with any requirement or standard and insurance and in such form as the Company may from time to time reasonably request.

### 8. Title and Risk of Loss

8.1 The risk of loss or damage shall not pass to the Company until the goods have been delivered into the Company's possession and are found and acknowledged to be in accordance with the contract, unless the Company expressly agrees in writing to accept the risk of loss or damage prior to receiving actual possession of the goods.

8.2 The title to the goods ordered shall pass to the Company on delivery of the goods to the place specified in the purchase order or as otherwise agreed without prejudice to any right of rejection or other right which may accrue to the Company or may have accrued to the Company under these conditions or otherwise, and whether or not payment therefor has been made or is due.

### 9. Payment

9.1 All payments are contingent upon receipt of fully acceptable goods and receipt of complete and accurate documentation.

9.2 Failure to attend to any of the following details may mean delay in payment, but no prompt payment discount shall be forfeited by the Company on account of the Supplier's failure to:

(a) send on the day of delivery for each consignment a separate advice note and invoice for each delivery; or

(b) mark clearly the order number on the consignment package, packing notes, invoices, monthly statements and all other correspondence relating thereto; or

(c) prepare the invoice in accordance with the official purchase order commitment,

9.3 The discount period shall be computed from the date delivery is made or complete and accurate documentation is received whichever last occurs. Provided however, if delivery is accepted by the Company more than fifteen (15) days prior to the delivery date specified on the face of this purchase order, the discount period and payment shall be computed from the delivery date specified or receipt of complete and accurate information, whichever last occurs.

9.4 The period for payment of invoices shall commence to run at the end of the month in which the delivery takes place except where goods reach the Purchaser after the time stipulated in which case the said period shall commence to run from the end of the month next following that in which delivery actually takes place. The Purchaser shall not pay interest for late payment. Unless otherwise stipulated and agreed in writing invoices shall be payable net 60 days from the end of the month in which delivery takes place or the month next following the month in which delivery actually takes place where goods reach the Purchaser after the time stipulated.

9.5 The Supplier agrees that the Company shall have the right to set-off against any amounts which may become payable by the Company to the Supplier under this purchase order or otherwise, any amounts which the Supplier may owe to the Company, whether arising under this purchase order or otherwise.

## 10. Company Design

The Company shall be deemed to be the absolute and unqualified owner of all inventions, materials, designs, drawings, plans, know-how, trade names, information, ideas and the implementation thereof furnished to the Supplier in connection with this purchase order and the Supplier warrants that no such inventions, materials, designs, drawings, plans, know-how, trade names, information, ideas and the implementation thereof shall without the Company's written permission, be disclosed or furnished to others or be incorporated in or used in connection with goods furnished to others. Where manufacture is to the Company's design, the Supplier agrees to inform the Company of any invention or improvements in design or method of manufacture arising out of, or in connection with the order and, if such invention or improvement be patentable, to grant to the Company the option to take out such patents in the Company's name

## 11. Tools, Dies, Moulds and Equipment

All tools, dies, moulds, printing plates, machinery, equipment etc. created for use on this order shall be the property of the Company and the Company may withdraw them from the Supplier's premises on demand in writing. They shall be carefully preserved by the Supplier and maintained in good operation and condition at all times and insured by the Supplier in full value against fire, loss, theft or accident.

## 12. Confidentiality

12.1 The purchase order and the subject matter thereof shall be treated as confidential between the Supplier and the Company and shall not be disclosed by the Supplier or any subcontractor or assignee or to any third party or used by the Supplier or any subcontractor or assignee for advertisement, display or publication without the Company's prior consent in writing.

12.2 The Supplier agrees neither to quote nor supply to any third party goods made with tools or materials furnished by the Company or created by the Supplier for the Company nor to supply to, disclose to or reproduce for the benefit of any third party, patterns, specifications, designs or drawings furnished by the Company or created by the Supplier for the Company without the Company's prior consent in writing. The Supplier shall promptly return to the Company all drawings, specifications and other data or papers furnished by the Company or created by the Supplier for the Company, together with all copies or reprints then in the Supplier's possession or control. The Supplier shall thereafter make no further use, either directly or indirectly of any such drawings, specifications, data or papers or of any information, derived therefrom in the performance of work for any third person without the Company's prior consent in writing.

12.3 Any inventions, materials, designs, drawings, plans, ideas and the implementation thereof concerning the Supplier's products, methods or manufacturing processes which the Supplier may disclose to the Company incidental to the manufacture of the goods or performance of the services covered by this purchase order shall, unless otherwise specifically agreed in writing, be deemed not to be confidential or trade secret, but to have been disclosed as a part of the consideration for this purchase order, and the Supplier shall defend and hold the Company harmless from any claim against the Company by reason of the Company's alleged use thereof.

## 13. Patents

By accepting this purchase order, the Supplier guarantees that the goods described herein, except such as are made to the Company's detailed designs, and the sale or use of them will not infringe or contribute to the infringement of any patent, registered design, trademark or copyright and the Supplier agrees that it will, at its own expense, defend, protect and save harmless the Company, its successors, assigns and customers and all users of its goods and services against all suits at law or in equity and from all damages, costs, expenses, claims and demands for actual or alleged infringement, of any patent or copyright provided that the Supplier is promptly notified of such suit and the papers and other legal documents served on the Company with regard thereto are delivered to the Supplier,

## 14. Indemnification

14.1 The Supplier shall indemnify the Company in respect of all loss and/or expense which results during or after proper use of goods directly or indirectly from defective materials, workmanship or design supplied by the Supplier, and in addition, the Supplier will repair or replace at the Company's option the defective item or items free of charge.

14.2 The Supplier shall indemnify and hold the Company harmless from any and all claims, liabilities and costs arising out of any negligence or of an act or omission on the part of the Supplier's employees, sub-contractors, assignees, or agents or in producing, delivering and/or installing the goods ordered hereunder.

14.3 The Supplier shall at all times be adequately insured with a bonded insurer against all insurable liabilities arising from the herein stated conditions of purchase.

14.4 The Supplier shall provide all facilities assistance and advice required by the Company or its insurers for the purpose of contesting or dealing with any action claim or matter arising out of the Supplier's performance or purported performance of or failure to perform its obligations arising from the herein stated conditions of purchase. Nothing contained in this paragraph shall by implication create any liability or obligation on the part of the Company or affect or diminish any disclaimer or liability elsewhere contained herein.

## 15. Default Remedies

15.1 For the purposes of this paragraph, an event of default shall be any one of the following:

(a) failure by the Supplier to deliver, or delay by the Supplier, in delivery of goods by the date agreed between the Supplier and the Company;

(b) failure by the Supplier to comply strictly with description, specification and drawings relating to the goods to be supplied or the failure to comply with the Irish Standard Specifications (or such other Specifications as may apply) and Conditions where applicable;

(c) failure of the goods to be supplied by the Supplier to conform, to a specified standard or to pass such inspection or test as may be required by the Company, or by his customer, or his agent, or by any government department concerned;

(d) the making by the Supplier of an assignment for the benefit of creditors, or application for or consent to the appointment of a receiver, trustee, Examiner or liquidator of it or of all or a substantial part, of its assets, or the institution of a proceeding of bankruptcy, receivership or insolvency by or against the Supplier, or the concealment by the Supplier of its property with the intent to hinder, delay or defraud its creditors or the levying against the Supplier's assets of any attachment or execution, or the admission in writing of the Supplier's inability to pay his debts, or the Supplier's going out of business, or the Company's good faith determination that the Supplier is unwilling or unable to perform its obligations hereunder, or the performance of any act or condition above stated in this paragraph subsequent to the closing of any bankruptcy estate or petition filed by or against it.

15.2 Upon the occurrence of an event of default or if any of the Supplier's representations and warranties shall prove untrue in any respect, then the Company at its option, may exercise all its rights and remedies including but not limited to the following:

(a) (i) cancel the purchase order forthwith by written notice to the Supplier, or to the receiver, examiner or the liquidator, or to any person in whom the purchase order may become vested, and repossess forthwith all property of the Company including all material sent to the Supplier for further processing or assembly;

(ii) or give each receiver, examiner, liquidator or other person the option of carrying on with the order subject to his providing a performance bond with securities acceptable to the Company or other assurance adequate, in the Company's sole discretion, for the due and faithful performance of the purchase order;

(b) and/or receive reimbursement in respect of all losses and/or expenses which result directly or indirectly from an event of default.

15.3 If the Company elects to repossess the property under condition 15.2(a)(i), the Company may enter upon any premises where the property or any part thereof may be situated and remove the same therefrom or may require the Supplier to make the property available at a reasonably convenient place designated by the Company. To facilitate receiver, the Company may require the Supplier to assemble the property regardless of the place of repossession. The Company shall not be liable for any loss or damage howsoever arising (including loss of data incurred as a result of the removal of such property, including the removal of equipment which has been integrated into or connected to the Supplier's computer system. Storage of such data shall not prevent removal of Goods).

15.4 In the event of any industrial dispute, fire, explosion or accident or of any stoppage of the Company's business or work beyond his control which may prevent or hinder the use of the goods or work, the subject matter of the order, the delivery of such goods or the completion of such work and the payment therefor may be suspended or postponed without liability at the Company's option until the circumstances preventing or hindering the use of such goods or work have ceased.

The Supplier shall forthwith notify the Company of any delay in delivery, despatch or completion, and without prejudice to any other right, the Company shall be entitled to cancel the purchase order under the terms of Condition 15.2 hereof.

15.5 In the event of a default under Condition 15.1.(b) or (c), the Company may at its discretion request the Supplier to rectify and replace to the Company's satisfaction free of cost, all goods failing to comply or conform.

15.6 The rights and remedies reserved or granted herein or under any other agreement heretofore, now or hereafter made by or for the Supplier for the benefit of the Company are cumulative and not exclusive of any such rights and remedies contained herein or in any other agreements heretofore, now or hereafter executed by or for the Supplier for the benefit of the Company or as otherwise provided at law, in equity, by statute, or in contract and the exercise by the Company of any one or more of such rights and remedies shall not be construed as a waiver of any of the other rights and remedies.

15.7 The waiver by the Company of any of its rights and remedies in respect to any one event of default shall not be deemed a waiver in respect to any prior or subsequent event of default.

15.8 The Company may remedy or effect over of any default without being deemed to have waived other rights and remedies hereunder in respect to such default.

#### **16 Assignment**

16.1 The Supplier shall not without the consent in writing of the Company, assign or transfer the contract or any part of it to any other company, organisation or person.

16.2 The Supplier shall not, without the consent in writing of the Company, sublet the contract or any part thereof, other than for materials, minor details or for any part of the goods of which the makers are named in this purchase order or the specification, but this shall not prevent the Supplier from subletting part of the contract to any company which is a member of the group to which the Supplier belongs, or a company with whom the Supplier is associated. Any such consent shall not relieve the Supplier of any of his obligations under this purchase order.

#### **17. Compliance With Law**

The Supplier undertakes that no goods supplied will, whether by reason of their existence, supply or use, entail the breach by any party of any law, bye-law, regulation or of the legal rights of any party. The Supplier will at the Company's request at any time and at the Supplier's expense, take any legal or other action as the Company reasonably considers necessary to rectify any breach of this undertaking.

#### **18. Cancellation**

The Company may at its option cancel this purchase order in whole or in part with respect to any undelivered goods. The Company's only obligation for canceling a purchase order covering standard stock goods shall be to pay for goods delivery prior to cancellation. If the Company cancels a purchase order covering goods fabricated to the Company's specifications and the Supplier is not in default, the Company shall pay to the Supplier the agreed unit price for goods completed and the substantiated costs incurred by the Supplier, before notice of cancellation connected with the fabrication of the goods not completed, provided however, that under no circumstances shall the total payment upon cancellation exceed the total price of this purchase order. In no event whether goods under the cancelled purchase order are standard or specially ordered shall the Company be liable for prospective or anticipated profits by reason of such cancellation.

#### **19. Applicable Law**

These conditions shall be governed by and construed in all respects in accordance with Irish Law and the Supplier agrees to submit to the non-exclusive jurisdiction of the Irish Courts in relation to any matter arising hereunder in dispute. Nothing in these conditions shall prejudice any condition or warranty (expressed or implied) or right or remedy to which the Company is entitled in relation to the goods ordered by virtue of statute or common law.

#### **20. Waiver**

The rights of the Company or the Supplier shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach. Any variation in the terms of this contract must be agreed in writing between the parties,

#### **21. Conditions Binding**

In the event that, for any reason, any provision or provisions in these conditions or any part thereof is or is held to be void, unenforceable or otherwise invalid, any contract made which incorporates these conditions shall continue to be fully binding and all other conditions herein, including the remainder of any condition where the effect of some part thereof is avoided, shall remain fully effective. Where any provision is adjudged to be void, unenforceable or invalid for whatever reason the said provision shall be given effect to in its reduced or modified form as may be decided by any court of competent jurisdiction and such voidness, unenforceability or invalidity shall not affect the validity of the remaining conditions or provisions,

#### **22. Headings**

Paragraph headings in these Conditions of Purchase are for ease of reference only and shall have no legal effect whatsoever.