

NCH Group Purchasing Terms and Conditions

The following terms and conditions shall apply to all purchases of Supplies by the NCH Group from 25 May 2018 and shall take precedence over any terms which may have been offered by the supplier before or may be offered by the supplier after the date of this Order. No terms or conditions submitted at any time by the Supplier shall form any part of the Contract.

1. DEFINITIONS

1.1 In these Conditions:

"Contract"	means the contract between the NCH Group and the Supplier consisting of the Purchase Order, these Conditions, and any other documents (or parts thereof) specified in the Purchase Order;
"Delivery Date"	means the date on which the Supplies are to be delivered to the Purchaser, as specified in the Purchase Order;
"Price"	means the price of the means any such Supplies supplied to the Purchaser by the Supplier pursuant to or in connection with the Purchase Order; as specified in the Purchase Order;
"Purchaser"	means the NCH Group;
"Purchase Order"	Purchaser's requirements for the Contract;
"Supplier"	means the person, firm or company who is the supplier of the Supplies named in the Purchase Order;
"Supplies"	means any such goods or services supplied to the Purchaser by the Supplier pursuant to or in connection with the Purchase Order.

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

2. VARIATION

2.1 These Conditions may only be varied with the written agreement of the Purchaser by a further official Purchase Order.

2.2 The Contract shall become binding and these Conditions shall be deemed to have been accepted by the Supplier on the acceptance of the Purchase Order by the Supplier (either verbally or in writing) or on delivery of the Supplies, whichever is the earlier.

3. SUPPLIES

3.1 The Supplier warrants and represents to the Purchaser that the Supplies shall:

3.1.1 conform in all respects with any particulars or specification specified in the Purchase Order including any variations or where none are specified, to the relevant BSI Specification;

3.1.2 conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force including the Sale of Goods Act 1979;

3.1.3 be of satisfactory quality and free from defects in materials and workmanship; and;

3.1.4 be fit and sufficient for the purpose for which such Supplies are ordinarily used and for any particular purpose made known to the Supplier by the Purchaser and the Purchaser relies on the skill and judgement of the Supplier in the supply of the Supplies and the execution of the Purchase Order;

3.1.5 be supplied new, unless otherwise stated.

4. **PRICE**

- 4.1 The Supplier shall not increase the Price unless it is validly accepted by the Purchaser and agreed in writing before the execution of the Purchase Order.
- 4.2 Unless expressly agreed otherwise between the parties in writing, the Price shall be inclusive of all delivery and insurance costs, VAT and any other applicable sales taxes, duties or levies.
- 4.3 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment of the Supplies delivered under the Purchase Order. The Purchaser undertakes to pay correctly submitted invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Purchaser. Invoices shall not be rendered by the Supplier until completion of delivery of all the Supplies which are the subject of the Purchase Order or of the consignment (as appropriate).
- 4.4 A valid invoice is one that is:
- delivered in timing in accordance with the contract;
 - that is for the correct sum;
 - in respect of Supplies supplied or delivered to the required quality (or are expected to be at the required quality);
 - which quote the relevant purchase order / contract reference (where used)
 - which has been delivered to the nominated address
- 4.5 The Purchaser specifically reserves the right to withhold or deduct by way of set-off or otherwise from any monies due or to become due to the Supplier any monies due to the Purchaser from the Supplier.
- 4.6 The Purchaser shall not be liable for any orders or amendments to orders other than those issued or confirmed on the official Purchase Order and shall not be responsible for the payment of the Price for Supplies supplied in excess of those required by the Purchase Order.
- 4.7 No payment of or on account of the Price shall constitute any admission by the Purchaser as to proper performance by the Supplier of its obligations under the Contract.
- 4.8 The supplier shall accept payment by BACS or in exceptional circumstances by cheque or other method as reasonably specified by the Purchaser.

5. **DELIVERY**

- 5.1 The Supplies shall be delivered to the place named on, and in accordance with, the Purchase Order. Delivery shall be completed when the Supplies have been unloaded at the point of delivery specified in the Purchase Order and delivery has been accepted by the Purchaser or its authorised representative. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever or howsoever arising and the Supplier shall indemnify and keep indemnified the Purchaser in respect of any actions, suits, claims, demands, losses, charges, costs and expenses (including legal

expenses and disbursements) which the Purchaser may suffer or incur as a result of or in connection with any damage or injury (including death) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act, omission or negligence of the Supplier or any of its sub-contractors.

- 5.2 Where any access to the premises is necessary in connection with delivery or installation, the Supplier and its sub-contractors shall at all times comply with the reasonable requirements of the Purchaser.
- 5.3 The time of delivery shall be of the essence for the purposes of the Contract and failure to deliver by the Delivery Date shall enable the Purchaser (at its option) to release itself from any obligation to accept and pay for the Supplies and / or to cancel all or part of the Supplies under the Purchase Order, in either case without prejudice to its other rights and remedies.
- 5.4 The Supplier's failure to effect delivery on the Delivery Date specified shall entitle the Purchaser to purchase substitute Supplies and to hold the Supplier accountable for any and all loss and/or additional costs incurred as a result of such failure.
- 5.5 Failure by the Purchaser to exercise its options under Conditions 5.3 and/or 5.4 in respect of any part of a Purchase Order shall not be deemed to constitute a waiver with respect to any subsequent part of that Purchase Order.
- 5.6 If Supplies are delivered before the Delivery Date, the Purchaser shall be entitled to its sole discretion to refuse to take delivery or to charge for insurance and storage of the Supplies until the Delivery Date.
- 5.7 Unless otherwise stated in the Purchase Order, the Supplier is responsible for obtaining and the cost of all the export and import licences for the Supplies, and in the case of the Supplies supplied from outside the UK, the Supplier shall ensure that accurate information is provided to the Purchaser as to the country of origin and the Supplier shall be liable for additional duties or taxes should the country of origin prove to be different to the one stated.
- 5.8 The Purchaser reserves the right, and may request that Supplies, materials, and/or items arising from services and works under this Order to be delivered to a third party.

6. **OWNERSHIP AND RISK**

Ownership and risk in the Supplies shall without prejudice to any of the rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 8 below) shall pass to the Purchaser on delivery.

7. **DAMAGE IN TRANSIT**

- 7.1 On despatch of any consignment of the Supplies shall send to the Purchaser at the address for delivery of the Supplies, an advice note specifying the means of transport, the place and date of despatch, the number of packages and their weight and volume.
- 7.2 The Supplier shall, free of charge and as quickly as possible, either repair or replace (as the Purchaser shall elect in its sole discretion) such of the Supplies as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:

7.2.1 in the case of damage to such Supplies in transit the Purchaser shall within thirty (30) days of delivery give notice to the Supplier that the Supplies have been damaged; and

7.2.2 in the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the despatch of the Supplies) within ten (10) days of the notified date of delivery give notice to the Supplier that the Supplies have not been delivered.

8. INSPECTION, REJECTION AND GUARANTEE

8.1 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 Purchase Order.

8.2 The Supplier shall permit the Purchaser or its authorised representatives to make any inspections or tests it may reasonably require in relation to the Supplies and the Supplier shall afford all reasonable facilities and assistance free of charge at the Purchaser's premises. The Supplier shall make good any defects or deficiencies in the event of any failure (in the sole opinion of the Purchaser) to comply with the terms of the Purchase Order or the Contract. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Supplies.

8.3 The Purchaser may by written notice to the Supplier reject any of the Supplies which fail to meet the requirements in the Contract. Such notice shall be given within a reasonable time after delivery to the Purchaser of the relevant Supplies. If the Purchaser rejects any of the Supplies pursuant to this Condition 8.3, the Supplier shall at the Purchaser's sole option (without prejudice to its other rights and remedies) either:

8.3.1 repair the defective Supplies as quickly as possible or (as the Purchaser shall elect in its sole discretion) replace the defective Supplies with Supplies which comply in all respects with the requirements under the Contract; or

8.3.2 refund to the Purchaser the Price in respect of the defective Supplies.

8.4 The Supplier shall guarantee the Supplies for a period of twelve (12) months from installation or eighteen (18) months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the Supplier). If the Purchaser shall, within such guarantee period or within thirty (30) days thereafter, give notice in writing to the Supplier of any defect in any of the Supplies that have arisen during the guarantee period under proper and normal use, the Supplier shall (without prejudice to any of the Purchaser's other rights and remedies) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect in its sole discretion) without cost to the Purchaser.

8.5 Any Supplies and rejected or returned by the Purchaser pursuant to this Condition 8 shall be returned to the Supplier at the Supplier's risk and expense.

9. LABELLING AND PACKAGING

9.1 The Supplies shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Supplies shall be marked with the Order Number, the net, gross and the weights, details of the contents shall be clearly marked on each container and all containers of hazardous Supplies (and all relating documents) shall bear prominent and adequate warnings. Where applicable the products must bear CE markings, set out all safety instructions, servicing and maintenance information, risk assessments, method statements and statements of work.

9.2 The Supplier shall indemnify and keep indemnified the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses (including legal expenses and disbursements) which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 9.1.

9.3 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged for unless returned. The Purchaser accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Purchaser.

10. INTELLECTUAL PROPERTY

10.1 Except to the extent that the Supplies are supplied in accordance with designs provided by the Purchaser, it shall be a condition of the Purchase Order that none of the Supplies will infringe any patent, trade mark, design right (whether registered or not), copyright or any other right in the nature of intellectual property of any third party and the Supplier shall indemnify and keep indemnified the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses (including legal expenses and disbursements) which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 10.1.

10.2 All materials, equipment, software, inventions, specifications, instructions, plans or any form of intellectual property right in any of the foregoing ("**Intellectual Property**"):

10.1.1 furnished to or made available to the Supplier by the Purchaser pursuant to the Purchase Order are hereby assigned to and shall remain vested solely in the Purchaser; and

10.1.2 the Supplier shall not (except to the extent necessary for the implementation of the Purchase Order) without prior written consent of the Purchaser, use or disclose any such Intellectual Property or any information (whether or not relevant to the Contract) which the Supplier may obtain pursuant to the Contract and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the Contract in any advertisement without the Purchaser's prior written agreement.

11. HEALTH AND SAFETY

11.1 The Supplier represents and warrants to the Purchaser that the Supplier has satisfied itself that:

11.1.1 all necessary tests and examinations have been made or will be made prior to delivery of the Supplies to ensure that the Supplies are designed, manufactured, supplied and installed so as to be safe and without risk to the health or safety of persons using the same; and

11.1.2 that it has made available to the Purchaser adequate information about the use for which the Supplies have been designed and have been tested and about any conditions necessary to ensure that when put to use the Supplies will be safe and without risk to health.

11.2 In any event, the Supplier will comply with the duties imposed on it by the Health & Safety at Work Act 1974 or any amendment thereto and of all other statutory provisions, rules and regulations so far as they are applicable. The Supplier shall indemnify and keep indemnified the Purchaser against any and all actions, suits, claims, demands, losses, charges, costs and expenses (including legal expenses and disbursements) which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 11.

- 11.3 Safety standards must not be compromised in any event, not even in order to reduce cost. Suppliers are expected to advise how their proposals will produce safe building outcomes. This must be included as part of the tender / quotation submission.

12. INDEMNITY AND INSURANCE

- 12.1 Without prejudice to any rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 8 above) the Supplier shall indemnify and keep indemnified the Purchaser against any and all actions, suits, claims, demands, losses, charges, costs and expenses (including legal expenses and disbursements) which the Purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (including death) to any person which may result directly or indirectly from any defect in the Supplies or the negligence, acts or omissions of the Supplier or any of its employees, agents or sub-contractors.
- 12.2 The Supplier shall take out and maintain with a reputable insurance company a policy or policies of insurance that are normal for contracts of this nature and covering all the matters which are the subject of indemnities under these Conditions.
- 12.3 The Supplier shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium.
- 12.4 The Supplier shall be liable under the provisions of the Contract (including Condition 12.1) whether or not it complies with the insurance provisions in this Condition 12.
- 12.5 Nothing in these Conditions or the Contract shall exclude or limit the liability of either party for death or personal injury caused by its negligence or for fraudulent misrepresentation.

13. CONFIDENTIALITY

- 13.1 The Supplier shall and shall procure that its staff shall keep secret and do not disclose any information of a confidential nature obtained by reason of the Contract except information which is in the public domain otherwise than as required to be by reason of a breach of this Condition 13 or disclosed by law.
- 13.2 The provisions of this Condition 13 shall apply during the continuance of the Contract and after its termination howsoever arising without limitation in time.

14. TERMINATION

- 14.1 In the event of a material breach of the Contract by the Supplier, the Purchaser may terminate the Contract with immediate effect by notice in writing.
- 14.2 The Purchaser may terminate the Contract with immediate effect by notice in writing to the Supplier if at any time:-
- 14.2.1 the Supplier passes a resolution that it be wound-up or that an application be made for an administration order or the Supplier applies to enter into a voluntary arrangement with its creditors;
 - 14.2.2 a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Supplier's property, assets or any part thereof;

- 14.2.3 the court orders that the Supplier be wound-up or a receiver of all or any part of the Supplier's assets be appointed;
- 14.2.4 the Supplier is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;
- 14.2.5 the Supplier (being an individual or partnership) is declared or adjudicated bankrupt or enters into any arrangement or composition with its creditors.

14.4 Nothing in this Condition 14 shall affect the coming into, or continuance in force of any provision of the Contract which is expressly or by implication intended to come into force or continue in force upon termination of the Contract.

15. ASSIGNMENT AND SUB-CONTRACTING

15.1 The Supplier shall not without the prior written consent of the Purchaser assign or transfer the benefit or burden of the Contract.

15.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under the Contract.

15.3 Where the Purchaser enters a sub-contract with a supplier or contractor for the purpose of performing the Contract, it shall cause a clause to be included in such sub-contract which requires payment to be made to the supplier or contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the sub-contract requirement.

16. NOTICES

16.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business.

17. GOVERNING LAW

17.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales including but not limited to the General Data Protection Regulations and Data Protection Act 2018, Bribery Act 2010 and Modern Slavery Act 2015 (and all superseding legislation).