

HARSCO INFRASTRUCTURE SERVICES LIMITED
TERMS OF PURCHASE
(EDITION 2009/1)

1. Interpretation

1.1. In these Terms:

“Buyer” means Harsco Infrastructure Services Limited (registered in England under number 276562);

“Contract” means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services;

“Delivery Address” means the address stated on the Order;

“Goods” means the goods (including any instalment of the goods or any part of them) described in the Order;

“Order” means the Buyer’s purchase order which refers to these Terms;

“Price” means the price of the Goods and/or the charge for the Services;

“Seller” means the person so described in the Order;

“Services” means the services (if any) described in the Order;

“Specification” includes any plans, drawings, data or other information relating to the Goods or Services;

“Terms” means the standard terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

“Writing”, and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2. Any reference in these Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3. The headings in these Terms are for convenience only and shall not affect their interpretation.

2. Basis of purchase

2.1. The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Terms.

2.2. These Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3. No variation to the Order or these Terms shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

3. Specifications

3.1. The quantity, quality and description of the Goods and the Services shall, subject as provided in these Terms, be as specified in the Order and/or in any applicable

Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.

- 3.2. Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer, and the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration.
- 3.3. The Seller shall not –
 - 3.3.1. disclose to any third party any Specification referred to in clause 3.2 except to the extent that it is or becomes public knowledge through no fault of the Seller; or
 - 3.3.2. use any such Specification except as required for the purpose of the Contract.
- 3.4. The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.
- 3.5. The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.
- 3.6. If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.
- 3.7. The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4. Price of the goods and services

- 4.1. The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:
 - 4.1.1. exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
 - 4.1.2. inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.
- 4.2. No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.
- 4.3. The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller.

5. Terms of payment

- 5.1. The Seller may invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.
- 5.2. Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services 60 days after receipt of a proper invoice or the acceptance of the Goods or Services in question by the Buyer, whichever is the later.
- 5.3. The Buyer may set off against the Price any sums owed to the Buyer by the Seller.

6. Delivery

- 6.1. The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.
- 6.2. Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.
- 6.3. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 6.4. The Buyer may at any time and at no cost to the Buyer require the Seller to postpone delivery of the Goods or performance of the Services in whole or in part.
- 6.5. If, for any reason, the Buyer cannot accept delivery of the Goods at the time or place stipulated in the Order, the Seller shall at its own cost store the Goods, safeguard them and take all reasonable steps to protect the Buyer's interests until their actual delivery.
- 6.6. A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 6.7. If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 6.8. The Buyer 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 Buyer 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.
- 6.9. The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.
- 6.10. The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.
- 6.11. A certificate of conformity must accompany each delivery of Goods certifying to the Buyer's satisfaction that all Goods within the delivery or consignment are manufactured in accordance with the Specification provided by the Buyer or the sample of the Goods upon which the Buyer has relied when placing the Order.

7. Risk and Property

- 7.1. Risk of damage to or loss of the Goods shall pass to the Buyer on delivery to the Buyer in accordance with the Contract.
- 7.2. The property in the Goods shall pass to the Buyer on delivery, unless payment for the Goods is made (in whole or part) prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

8. Warranties and liability

- 8.1. The Seller warrants to the Buyer that the Goods:
 - 8.1.1. will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
 - 8.1.2. will be free from defects in design, material and workmanship;
 - 8.1.3. will correspond with any relevant Specification or sample; and
 - 8.1.4. where a sample has been provided, will be of the same or superior quality to that sample; and
 - 8.1.5. will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 8.2. The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- 8.3. Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
 - 8.3.1. to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven days; or
 - 8.3.2. at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
- 8.4. The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
 - 8.4.1. breach of any warranty given by the Seller in relation to the Goods or the Services;
 - 8.4.2. any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person in any country, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
 - 8.4.3. any liability under the Consumer Protection Act 1987 in respect of the Goods;

- 8.4.4. any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
- 8.4.5. any act or omission of any of the Seller's personnel in connection with the performance of the Services.

9. Termination

- 9.1. The Buyer may cancel the Order in respect of all or part only of the Goods and/or the Services without having to justify such cancellation by giving notice to the Seller at any time prior to delivery or performance. In such event:-
 - 9.1.1. where the Goods are not stock merchandise of the Seller, the Buyer shall make and the Seller shall accept payment on the basis of a fair valuation, supported by documentary evidence, for work actually done under the Order prior to receipt by the Seller of notice of termination but be limited to monies not otherwise recoverable by the Seller;
 - 9.1.2. where the Goods are standard stock merchandise of the Seller, the Buyer shall have no further obligation in respect of the cancellation except to make payment for reasonable consignment and re-delivery charges to the Seller in respect of Goods dispatched but not delivered prior to such cancellation.
- 9.2. The Buyer may terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:
 - 9.2.1. the Seller is in breach of any of its obligations in terms of the Contract; or
 - 9.2.2. the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation; or
 - 9.2.3. an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
 - 9.2.4. the Seller ceases, or threatens to cease, to carry on business; or
 - 9.2.5. the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

10. Insurance

- 10.1. The Seller shall indemnify the Buyer against all claims in respect of loss or damage to persons and property (including consequential loss) incurred by the Buyer or third parties arising out of or in consequence of the supply of the Goods or performance of the Services and shall, at its own cost, take out and maintain adequate insurance including Employer's Liability, Product and Public Liability, and third party and professional indemnity insurance, and shall supply details of such insurance when requested to do so by the Buyer. If the Seller fails to take out and maintain insurance as above, the Buyer may effect the same and deduct the cost of so doing from the monies which would otherwise be due to the Seller.

11. Terms to survive termination of the Contract

- 11.1 Termination of the Contract shall not affect any term which is expressly or by implication to operate after the termination.
- 11.2 Clauses 3.3, 8.4 and 10 of the Contract shall survive any termination of the Contract.

12. General

- 12.1 The rights and remedies of the parties in terms of or arising out of the Contract are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity. Accordingly the exercise by a party of any one right or remedy in terms of or arising out of the Contract, or at law or in equity, shall not prevent it from exercising any other such right or remedy.
- 12.2 The Buyer may perform any of its obligations in terms of the Contract by itself or through any holding or subsidiary company.
- 12.3 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
- 12.4 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Contract, but, this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 12.5 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.
- 12.6 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.7 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 12.8 The Contract shall be governed by the laws of England, and the Seller agrees to submit to the non-exclusive jurisdiction of the English courts.