

FOLD HOUSING ASSOCIATION ('Fold')
Terms and Conditions for the Purchase of Goods and Supply of Services
(Effective from 30 June 2008)

1. Definitions:

- 1.1 **'Conditions'** means these terms and conditions of purchase and supply.
- 1.2 **'Delivery Date'** means the date(s) or times specified by Fold on the Purchase Order for the delivery of Goods or the supply of Services.
- 1.3 **'Goods'** means the goods to be purchased by Fold as stated on the Purchase Order.
- 1.4 **'Services'** means the services to be preformed or supplied to Fold on the Purchase Order.
- 1.5 **'Price'** means the price for the Goods or the Services, excluding VAT as appropriate.
- 1.6 **'Purchase Order'** means the purchase order issued by Fold.
- 1.7 **'Supplier'** means the supplier of the Goods or provider of the Services to Fold identified on the Purchase Order.

2. Conditions Applicable:

- 2.1 The Conditions shall apply to all contracts for the purchase of Goods by, and supply of Services to, Fold to the exclusion of all other terms and conditions including any terms and conditions which the Supplier may purport to apply under any tender or similar document or in correspondence. These Conditions constitute the entire understanding between Fold and the Supplier with respect to the subject matter covered by the Purchase Order and supersede all and any previous agreements and understandings between the parties.
- 2.2 Dispatch or delivery of the Goods or the commencement of the supply of the Services by the Supplier to Fold shall be deemed conclusive evidence of the Supplier's acceptance of these Conditions.
- 2.3 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by Fold.

3. Goods:

- 3.1 The quantity and description of the Goods or the Services to be provided shall be as set out in the Purchase Order.

4. Sale of Goods by Description/Sample:

- 4.1 The Goods shall be supplied in accordance with the description contained in the Purchase Order and manufactured in accordance with all applicable British standards.
- 4.2 The Supplier shall not make changes in the specification of the Goods without the written consent of Fold.
- 4.3 This contract is a contract for sale by sample.
- 4.4 The Goods will correspond with the sample and quality.
- 4.5 All representations, statements or warranties made or given by the Supplier, its servants and agents (whether orally or in writing or in any of the Supplier's brochures, catalogues and advertisements) regarding the quality and fitness for purpose of the Goods or any of the Goods shall be deemed to be expressly incorporated into these Conditions.

5. Services:

- 5.1 The Services shall be provided and supplied in accordance with the description contained in the Purchase Order and in accordance with all applicable best practice standards or guidelines applicable to the Supplier's industry sector.
- 5.2 The Supplier shall not make changes in the nature of the Services without the written consent of Fold.
- 5.3 All representations, statements or warranties made or given by the Supplier, its servants and agents (whether orally or in writing) shall be deemed to be expressly incorporated into these Conditions.

6. Delivery/Supply:

- 6.1 Time shall be of the essence
 - 6.1.1 for the delivery of Goods;
 - 6.1.2 for any date(s) or times when Services are to be preformed or supplied;
 - 6.1.3 for the length of time that any of the Services are to take;and, if no date is specified on the Purchase Order the Delivery Date shall be as soon as possible time being of the essence
- 6.2 If the Supplier fails to deliver the Goods or provide the Services in accordance with the contract on the Delivery Date then without prejudice to Fold's rights for breach of contract:
 - 6.2.1 Fold may at its option terminate the contract either immediately or at the date that is specified in the notice given to the Supplier under this clause. In this event and without

prejudice to Fold's other remedies the Supplier shall at the request or direction of Fold promptly collect any Goods which have been delivered and remove or disconnect any of the Services or ;

- 6.2.2 where delivery of a quantity of Goods which correspond to the contract which is less than the agreed quantity has been tendered and Fold has not exercised its rights of termination under clause 6.2.1 Fold may accept the Goods which correspond to the contract and recover for the Supplier's breach in respect of the failure to deliver the remainder of the Goods;
- 6.2.3 Fold may require the Supplier promptly to deliver sufficient Goods which correspond to the contract to comply with the quantity required;
- 6.3 Fold may exercise these rights by notice to the Supplier.
- 6.4 The Supplier warrants to Fold that it will fulfil any Purchase Order within the time period specified in the Purchase Order, unless agreed otherwise in writing between the parties.
- 6.5 The Supplier shall deliver the Goods or supply the Services at the address stated in the Purchase Order.

7. Loss, Damage and Rejection of Goods:

- 7.1 Upon receiving notice of any loss or damage to the Goods in transit from Fold the Supplier shall replace free of charge the Goods damaged or lost in transit and due delivery of the Goods shall not be deemed to have taken place until replacement Goods have been delivered by the Supplier to Fold.
- 7.2 Fold shall not be deemed to have accepted any part of the Goods until after it has actually inspected the Goods and ascertained that they are in accordance with the contract. Fold may reject Goods, which are not in accordance with the contract until a reasonable time after such inspection.
- 7.3 Fold may by notice to the Supplier prior to acceptance reject any Goods, which are not in accordance with the contract. Fold may set off against any payment due to the Supplier the price of such Goods and unless within a reasonable time of receipt of notice of rejection the Supplier collects such Goods, Fold may dispose of them as it shall think fit (provided that if Fold sell such Goods it shall account to the Supplier for the net proceeds of such sale).

8. General:

- 8.1 The risk in the Goods shall not pass to Fold until the Goods have been accepted by Fold, notwithstanding that property in the Goods shall transfer to Fold on delivery.
- 8.2 Fold may set off against any sums due to the Supplier whether under this contract or otherwise any set off or counterclaim to which Fold may at anytime be entitled.
- 8.3 Without Prejudice to its rights under any other clause of this contract, Fold may cancel this contract by giving written notice to the Supplier at anytime before all of the Goods are delivered or Services provided if the Supplier is in material breach of its obligations (and has refused or neglected to remedy a breach that is capable of remedy within a reasonable period despite Fold's written request to do so). If such written notice is given:
 - 8.3.1 the Supplier shall cease to be bound to deliver or provide, and Fold shall be no longer be bound to receive, any further Goods or Services ;
 - 8.3.2 Fold shall cease to be bound to pay any sum which relates to the price of the Goods or Services which have not been delivered or provided;
 - 8.3.3 Fold shall not be liable for any loss or damage whatever arising from such cancellation.
- 8.4 The Supplier shall indemnify, and keep indemnified, Fold against all claims, costs and expenses which Fold may incur and which arise, directly or indirectly, from the Supplier's breach of any of its obligations under these Conditions.
- 8.5 The Supplier shall have in place and maintain a comprehensive policy of insurance in respect of all such liabilities against which it is normal or prudent to insure in respect of the delivery of Goods or supply of Services to Fold, and will produce evidence of such insurance to Fold on demand.
- 8.6 Any notice to be given under these conditions shall be in writing and sent by first class post, or by fax or e-mail (confirmed by first class post), to the address of Fold or the Supplier stated on the Purchase Order. Notices shall be deemed to have been received (1) if sent by post two working days after posting; (2) if sent by fax on the next working day after transmission (provided this is validated by a transmission report); and (3) if sent by e-mail on the date of sending (provided that the transmission and receipt of the e-mail is acknowledged or verified).
- 8.7 The Supplier shall comply in all respects and at all times with the Provisions of the Data Protection Act 1998 and all regulations made under that Act, and shall have established procedures to ensure continuing compliance with all such legislation.

9. Price and Payment:

- 9.1 The price shall be as set out in the Purchase Order and is exclusive of any VAT (if applicable) which shall be due at the rate prevailing at the date of the Supplier's invoice.

10 **Term:**

10.1 Unless otherwise agreed in writing, nothing in these Conditions shall oblige Fold to continue any course of dealing with the Supplier.

11 **Rights of Third Parties**

11.1 Nothing in these Conditions shall confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999

12 **Proper Law of Contract:**

12.1 This contract is subject to the laws of Northern Ireland and the exclusive jurisdiction of the courts of Northern Ireland.