

MALONEY METALCRAFT LTD

TERMS & CONDITIONS OF PURCHASE

1.0 INTRODUCTION.

1.1 These Terms and Conditions of Purchase shall apply unless amended by any other terms and conditions agreed in writing between the parties and included in the Purchase Order or subsequent amendment.

1.2 DEFINITIONS

PURCHASER: Maloney Metalcraft Ltd.
SUPPLIER: To firm or person named as such in the Purchase Order.
Goods: All materials or other items to be supplied, including any services to be performed or documents to be provided under the Order.
Order: The Purchase Order.
Work: The materials, equipment and all things necessary to perform, complete and deliver the Goods in accordance with the Order.

2.0 OFFERS / TENDERS.

All costs related to the preparation and/or submission of bids shall be borne by the tenderer. Any deviations from the enquiry shall be clearly specified in writing. If no deviation is specified it shall be deemed that none exists.

3.0 PURCHASE ORDER.

3.1 The Purchase Order constitutes the entire agreement between the parties and supersedes all prior or contemporaneous written or oral enquiries, bids or other agreements relating to the Order. No other terms or conditions shall apply.

3.2 Only Purchase Orders/faxes of intent, or amendments issued in writing shall be considered as binding upon the parties.

4.0 PURCHASE ORDER CONFIRMATION.

The SUPPLIER shall confirm the Purchase Order by signing and returning an acceptance copy duly signed. If the SUPPLIER fails to return the acceptance copy within 14 days of the date of issue of the Order, the PURCHASER shall have the option to cancel the Order with no cancellation charges being incurred. No payment shall in any case be made until the acceptance copy has been received by the PURCHASER.

5.0 GOODS.

The Goods supplied under the Order shall be new, free from defect and of good quality and shall conform to the drawings, data, specifications, standards and other requirements stated in the Order.

6.0 PERFORMANCE OF THE WORK.

The SUPPLIER shall commence the Work immediately upon receipt of the Order or instruction to proceed and shall furnish sufficient resources and personnel, skilled in their respective duties.

7.0 ASSIGNMENT AND SUB-CONTRACTING.

The SUPPLIER shall not, without the written consent of the PURCHASER, assign or sub-contract the Work or any part thereof, other than for materials purchases or for minor parts. The SUPPLIER shall be fully responsible for all work done and all acts, omissions or defaults of its sub-contractors and suppliers to the same extent as if the work had been performed by the SUPPLIER.

8.0 PRICE.

8.1 The rates and prices stated in the Purchase Order shall be fixed and firm unless expressly agreed to the contrary.

8.2 In the case of any Goods to be provided on a reimbursable basis, payment will become due only when the SUPPLIER has submitted full supporting documentation and the PURCHASER has had a reasonable time to check and accept all documentation on which the account is based.

8.3 The rates and prices set out in the Purchase Order are inclusive of all taxes, duties and other charges except VAT, which shall be added as a separate item to the invoice at the rate appropriate to the Purchase Order at the time of invoice.

9.0 TERMS OF PAYMENT.

9.1 Unless otherwise stated in the Order, the PURCHASER shall make payment of the complete contract value unless otherwise agreed, 60 days from the end of the month of receipt of a valid invoice, provided that all the SUPPLIER'S obligations have been fulfilled and all deliveries specified have been made. The PURCHASER may withhold any disputed amounts.

9.2 Unless otherwise agreed in writing, if delivery takes place earlier than the agreed date, the date for calculation of payment shall be the delivery date stated in the Order.

9.3 If any advance payment is agreed, the SUPPLIER shall, if requested by the PURCHASER and before any payment is made, provide an on demand guarantee issued by a bank.

10.0 DELIVERY / SHIPPING INSTRUCTIONS.

10.1 The provisions of the latest issue of INCOTERMS shall apply to all deliveries made under the Order.

10.2 If the SUPPLIER is responsible for carriage, it shall as soon as possible send an advice note to the PURCHASER advising despatch so that the PURCHASER may make adequate preparations for the receipt of the Goods.

10.3 If the PURCHASER is responsible for carriage, the SUPPLIER shall in good time prior to despatch, request despatch instructions from the PURCHASER.

11.0 PACKING LIST / ADVICE NOTE / INVOICE.

11.1 Packing lists / advice notes / invoices etc. shall relate only to this Purchase Order and shall be marked according to the requirements stated in the Order.

11.2 Packing lists / advice notes and invoices shall be completed so that each item corresponds to the Order with respect to item number, Goods description and specification. As a minimum Purchase Order and Item Number to be referenced.

11.3 All Goods shall be packed, marked and protected in accordance with the packing lists and with any instructions stated in the Order. If the consignment consists of more than one package, each separate package shall contain a detailed list of contents.

11.4 The SUPPLIER shall submit one original invoice and three copies. Invoices which do not comply with the Order will be returned to the SUPPLIER and no payment shall be due until the Order requirements are met.

11.5 All Goods and packing lists / advice notes shall be marked with the gross weight.

12.0 CERTIFICATES OF ORIGIN / CUSTOMS INVOICES.

Costs incurred by the PURCHASER due to lack of certificates of origin or customs invoices shall be deducted from the Order price.

13.0 TIME OF DELIVERY.

13.1 Delivery shall take place at the place, date and time stated in the Purchase Order. The SUPPLIER shall be deemed to have fulfilled its obligation only when all items specified in the Purchase Order have been completely delivered including documentation.

13.2 Deliveries shall not take place until the issue by the PURCHASER of an Inspection Release Note or formal waiver of inspection. The issue of an Inspection Release Note or waiver of inspection does not relieve the SUPPLIER from any of its obligations under the Order.

13.3 Unless otherwise stated in the Order, if delivery is delayed, the PURCHASER shall deduct liquidated damages amounting to 1% of the total Order price per calendar week or part thereof. The liquidated damages shall not exceed 10% of the total Purchase Order price.

13.4 Unless otherwise stated in the Order or subsequently agreed, partial deliveries will not be accepted and cannot be considered as a partial fulfilment of the SUPPLIER'S obligations.

13.5 As soon as the SUPPLIER believes, or has grounds for believing that the delivery will be delayed, it shall immediately notify the PURCHASER of the delay and the cause thereof. The SUPPLIER shall inform the PURCHASER of the measures it will initiate in order to recover the delay.

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14.0 CHANGES IN THE PURCHASE ORDER.

- 14.1 The PURCHASER may, at any time, make changes to the Order. Such changes shall be made in writing.
- 14.2 The SUPPLIER shall, upon written notification of the change, proceed with the Order as changed.
- 14.3 The SUPPLIER shall as soon as possible and in any case within 14 days of the notification of the change, inform the PURCHASER in writing of the effects (if any) the change will have upon the price, time of delivery and specifications. If the SUPPLIER fails to provide such information, it shall be deemed that no such effects exist. No charge is to be made for review of revised project specifications.
- 14.4 If such change causes an increase or decrease in price or delivery, an equitable adjustment to the Purchase Order price shall be made by agreement between the parties.
- 14.5 Disagreement of the payment due in respect of such changes to the Order shall not entitle the SUPPLIER to delay the work or withhold delivery.

15.0 GUARANTEE / WARRANTY.

- 15.1 The SUPPLIER warrants that the Goods comply with accepted standards of good workmanship, the Purchase Order, the specifications and all applicable laws and regulations. Unless otherwise stated in the Order, the SUPPLIER shall, free of charge, repair all defects during a period of 18 months from the date the Goods are taken into use for their proper purpose or 24 months from the time of delivery, whichever is the earlier. In the event that the Goods are out of function for a period due to the SUPPLIER'S default or responsibility, the guarantee period shall be prolonged for a period equivalent to the time it has not been possible to use the Goods for their proper purpose. Parts, which are replaced or repaired in accordance with the above guarantee, shall have a renewed guarantee period equal to the original guarantee period.
- 15.2 The SUPPLIER undertakes under the above guarantee that the Goods shall be rectified to comply with the Purchase Order or replaced by new goods as soon as possible and free of charge.

16.0 LIABILITY FOR DEFAULT, INSOLVENCY.

If the SUPPLIER fails to fulfil its obligations in accordance with the Order, or becomes insolvent, the PURCHASER may choose one or more of the following alternatives:-

- A) Cancel the Order.
- B) Demand that the SUPPLIER performs the necessary rectification work immediately.
- C) Retain an amount sufficient to ensure rectification of the Goods.
- D) Demand compensation for all losses incurred by the PURCHASER but limited to the Order price.

17.0 FORCE MAJEURE.

- 17.1 Force Majeure shall be defined as any cause of event beyond the control of the parties which cannot be foreseen, is unavoidable and which is not the fault or responsibility of the part and which prevents, delays or hinders the performance of the Work. Late performance or delivery by a sub-supplier or sub-contractor to the SUPPLIER shall not constitute grounds for force Majeure.
- 17.2 The parties may be relieved from their respective obligations to the extent that they prove that they have been prevented from keeping such obligations due to Force Majeure.
- 17.3 The affected party shall immediately notify the other party of the Force Majeure. If a party fails to give such notice, it shall be precluded from the right to be relieved of its obligations.
- 17.4 In the event of Force Majeure, each party shall be responsible for its own costs resulting from the Force Majeure.

18.0 RIGHT TO INFORMATION / AUDIT.

- 18.1 The PURCHASER may, upon request obtain or have access to all necessary information from the SUPPLIER including but not limited to design, material and equipment orders, quality, performance, progress, sub-contracts, sub-orders etc.
- 18.2 The SUPPLIER shall permit the PURCHASER or its client to carry out any audit or inspection deemed to be necessary. Audits or inspections carried out by the PURCHASER shall not relieve the SUPPLIER of its contractual responsibilities under the Order. The SUPPLIER shall afford all reasonable access for such audit or inspection.

19.0 OWNERSHIP.

- 19.1 Title to the Goods, or parts of the Goods, together with all documentation to be provided by the SUPPLIER according to the Purchase Order, but not risk, shall pass to the PURCHASER on payment or part payment as appropriate.
- 19.2 All drawings, specifications and other documents, which are supplied by the PURCHASER, shall remain the property of the PURCHASER and shall not be copied or disclosed to any other party without prior written consent.
- 19.3 Notwithstanding the above, the SUPPLIER shall be responsible and shall bear all risk of loss or damage to the Goods until final delivery.

20.0 TERMINATION.

- 20.1 If the main contract between the PURCHASER and its client is terminated for any reason, the PURCHASER shall have the right to terminate this Purchase Order. In such event, the PURCHASER shall pay an equitable amount to be agreed between the parties for the work completed up to the date of termination and any other necessary costs and cancellation charges the SUPPLIER has to make due to the termination.
- 20.2 If the PURCHASER terminates the Order due to the default of the SUPPLIER, the SUPPLIER shall be paid for work carried out up to the date of termination, calculated in accordance with the Purchase Order. The PURCHASER shall be entitled to set off against any payments the additional cost of completing the work elsewhere.
- 20.3 In the event of termination for any reason, the SUPPLIER shall, if and when required by the PURCHASER, deliver promptly to the PURCHASER all completed work, work in progress, any materials received for the work, including free-issue materials, all certification, documentation, drawings, programmes, plans, specifications and any other information of any kind pertaining to the Order.
- 20.4 No payment shall be made in any circumstances in respect of consequential losses, loss of anticipated profit, loss of contract etc.

21.0 PATENTS.

The SUPPLIER shall indemnify the PURCHASER against any claims by third parties in relation to any patent infringement by the SUPPLIER.

22.0 CONFIDENTIALITY.

- The SUPPLIER shall hold in confidence and not divulge to third parties or use in any way except for bona-fide purposes for the performance of the Work, any technical information provided in connection with the Order so long as the information was not already in the public domain.
- 22.1 In the event that the seller wishes to advertise its involvement in the contract, formal permission is to be sought.

23.0 APPLICABLE LAW / DISPUTES.

- 23.1 This Purchase Order is governed by English Law.
- 23.2 All disputes relating to this Purchase Order shall be settled by the ordinary court of justice within the local jurisdiction of which the PURCHASER'S registered office is located.