

EDEN PROJECT

GENERAL CONDITIONS OF PURCHASE

1. Definitions

Eden Project/Buyer/We/Us/Our Supplier/You/Your	means the Eden Project Limited means the person, firm or company to whom the Order is addressed
Goods	means the materials and/or services described in the Order
Order	means the Order placed by the Eden Project on the Supplier for the purchase of the Goods
Contract	means the contract for the sale and purchase of Goods and/or services
Order amendment/variation	means our authorised Order amendment or series of Order amendments each having precedence over any earlier Order amendment

2. The Contract

This Order constitutes the Eden Project's offer to the Supplier and shall become a binding Contract on the terms and conditions set out below upon acceptance by the Supplier either by the Supplier signing and returning a duplicate of these Conditions or by the Supplier commencing performance of the Contract. All other terms and conditions of Contract are excluded and all these general conditions shall apply to the Contract unless modified with the prior written consent of the Eden Project.

3. Price

All Goods are to be invoiced at the prices ruling at the date of and as specified in the relevant Order. Such prices which will not be subject to fluctuation irrespective of the time of delivery of the Goods will include all packaging charges, storage, insurance, delivery, installation and commissioning (as applicable) but shall exclude VAT.

Any deposits or prepayments paid by Us for the Goods at the date of the relevant Order or at any other time shall be returned forthwith if the Contract is terminated for any reason other than by Our default or in accordance with Condition 5 below.

4. Order Amendments/Variations

The Eden Project will have the right, before delivery, to amend or vary the Contract in writing, If this Order amendment/variation will cause a change to the price or delivery date then You must suspend performance of the Contract and notify Us without delay, and notify Us of the new price and delivery date. Following our receiving such notice You must allow Us at least 10 working days to consider any new price and delivery date. The Order amendment/variation shall only take effect when the Eden Project's authorised Officer accepts in writing the new price and delivery date within the period You stipulate. If the Eden Project's authorised Officer fails to confirm the Order amendment/variation within the period You stipulate, then performance of the Contract shall immediately resume as though the said Order amendment/variation had not been issued (except that We will still exercise Our right of cancellation in accordance with Condition 5).

5. Our Right of Cancellation

In addition to Our other rights of cancellation under this Contract, We may cancel the Order and any Order amendment/variation thereto at any time by sending You a notice of termination. You will comply with any instructions that We may issue with regard to the Goods. If You submit a termination claim then We will pay You the cost of any commitments, liabilities or expenditure that in Our reasonable opinion were consequences of this Contract at the time of termination. The total of all payments made or due to You under this Contract, including termination payment shall not exceed the price. If You fail to submit a termination claim within 3 months of the date of Our notice of termination then We shall have no further liability under the Contract.

6. Quality and Description

- (a) The Goods shall:
 - a. Conform in every respect with the provisions of the Contract
 - b. be capable of all standards of performance specified in the Contract
 - c. be fit for any purpose made known to You expressly or by implication and in this respect We rely on Your skill and judgement
 - d. be new (unless otherwise specified on the Order) and be of sound materials and skilled and careful workmanship
 - e. correspond with their description of any samples, patterns, drawing, plans and specifications referred to in the Contract
 - f. be of satisfactory quality
 - g. comply with any current legislation
- (b) Unless specifically required under the Contract, there shall be no asbestos content in the Goods.

7. Work on our Premises

If the Contract involved any works or services that You perform on Our Premises then the following conditions shall apply:

- (a) You shall ensure that You and Your employees, Your sub-contractors and their employees and any other person associated with You, will adhere in every respect to the obligations imposed on You by current safety legislation.
- (b) You shall ensure that You and your employees, Your sub-contractors and their employees and any other person associated with You will comply with any regulations that We may notify to You in writing.
- (c) You shall ensure that there is the minimum amount of disruption to Our business
- (d) You shall ensure that if any damage is sustained to Our Premises as a result of Your performance of the Contract then You will forthwith reinstate the damaged part or parts of the premises to their previous condition or offer reasonable compensation. Such reinstatement is to be subject to Our final approval.

8. Progress and Inspection

- (a) You shall at Your expense provide any programme of manufacture and delivery that We may reasonably require. You shall notify Us without delay in writing if Your progress falls behind or may fall behind any of these programmes.
- (b) We shall have the right to check progress at Your works or at the works of sub-contractors at all reasonable times, to inspect and reject Goods that do not comply with the Contract. Your sub-contracts shall reserve such right for Us.

- (c) Any inspection or approval shall not relieve You from Your obligations under this Contract.

9. Packages not returnable

Unless otherwise stated in the Contract, all packages shall be non-returnable. If the Contract states that the package is returnable, You must give Us full disposal instructions before the time of delivery. The packaging must be clearly marked to show to whom it belongs. You must pay the cost of all carriage and handling for the return of the packaging. We shall not be liable for any package lost or damaged in transit.

10. Safety

You shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and the environment and in particular to the marking of hazardous Goods, the provision of data sheets for hazardous materials and all provisions relating to food.

11. Delivery

- (a) The goods shall be properly packed, secured and despatched at Your expense to arrive in good condition at the time or times and the place or places specified in the Contract.
- (b) If You or Your carrier delivers any Goods at the wrong time or to the wrong place then We may deduct from the price any resulting costs of storage or transport.

12. Late Delivery

If the Goods or any part of them are not delivered by the time or times specified in the Contract then We may by written notice cancel any undelivered balance of the Goods. We may also return for full credit at Your expense any Goods that in Our opinion cannot be utilised owing to this cancellation. In the case of services, We may have the work performed by alternative means and any additional costs reasonably so incurred shall be at Your expense. This shall not affect any other rights that We have.

13. Property and Risk

- (a) You shall bear all risks of loss or damage to the Goods until they have been delivered and shall insure accordingly.
- (b) Ownership of the Goods shall pass to Us:
 - a. When the goods have been delivered but without prejudice to Our right of rejection under this Contract, and
 - b. If We make any advance or stage payment, at the time such payment is made, in which case You must as soon as possible mark the Goods as Our property.

14. Acceptance

We shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of delivery if they do not conform with the requirements of this Contract. It is agreed that We may exercise the right of rejection notwithstanding any provision contained in the Sale of Goods Act 1979, Section 11 or Section 15A or Section 30 (Subsections (2A) and (2B)) or Section 35. We shall give You a reasonable

opportunity replace the Goods with new Goods, that conform with this Contract, after which time We shall be entitled to cancel the Order and purchase the nearest equivalent Goods elsewhere. In the event of cancellation under this condition You shall promptly repay any moneys paid under the Contract without any retention or offset whatsoever. You must collect all rejected Goods within a reasonable time of rejection or We shall return them to You at Your risk and expense.

15. Payment

Unless stated otherwise in the Contract We shall pay you on or about one month following the date of the invoice. Your invoice must be addressed to the Finance Department and must quote the full order number. We shall not be held responsible for delays in payment caused by Your failure to comply with Our invoicing instructions.

16. Your Warranty

It is expressly agreed between Us that:

- (a) You shall promptly make good at Your expense any defect in the Goods that We discover under proper usage during the first 12 months of actual use or 18 months from the date of acceptance by Us whichever period shall expire first. Such defects may arise from your faulty design, your erroneous instructions as to use or inadequate or faulty materials or poor workmanship or any other breach of Your obligations whether in this Contract or at law.
- (b) Repairs or replacement will be covered by the above warranty but for a period of 12 months from acceptance by Us.
- (c) You will ensure that compatible spares are available to facilitate repairs (where applicable) for a period of at least 10 years from the date of delivery of the goods.

17. Indemnity and Insurance

- (a) You shall indemnify Us against all loss, actions, costs, claims, demands, expenses and liabilities whatsoever (if any) which We may incur either at common law or by statute in respect of personal injury to or death of any person or in respect of any loss or destruction of or damage to property (other than a result of any defaults or neglect of ourselves or of any person for whom We are responsible) which shall have incurred in connection with any work executed by You under this Contract or shall be alleged to be attributable to some defect in the Goods.
- (b) This Order is given on the condition that (without prejudice to the generality of Condition 17(a)) You will indemnify against all loss, costs, claims, demands, expenses and liabilities whatsoever (if any) which We may incur either at common law or by statute (other than as a result of any default or neglect of ourselves or of any person for whom We are responsible) in respect of personal injury to or death of any of Your or Our employees, agents, sub-contractors or other representatives while on Our premises whether or not such persons are (at the time such personal injury or death are caused) acting in the course of their employment
- (c) You will indemnify Us against all loss, costs, expenses and liabilities caused to Us whether directly as a result of the action, claim or demand of any third party by reason of any breach by You of these conditions or of any terms or obligations on Your part implied by the Sale of Goods Act 1979, by the supply of Goods and Services Act 1982 or by any other statute or statutory provision relevant to the Contract or to Goods or work covered thereby. This indemnity shall not be prejudiced or waived by any exercise of Our rights under Condition 14.

- (d) You shall hold satisfactory insurance cover with a reputable insurer to fulfil Your insurance obligations for the duration of this Contract including public liability insurance cover of at least £2m (two million pounds Sterling). You shall effect insurance against all those risks arising from Your indemnity in Conditions 17(c). Satisfactory evidence of such insurance and payment of current premiums shall be shown to Us upon request.

18. Recovery of Sums Due

Whenever under the Contract any sums of money shall be recoverable from or payable by You, they may be deducted from any sums then due or which at any later time may become due to You under this Contract or under any other Contract You may have with Us.

19. Matters Beyond Control

If either party is delayed or prevented from performing its obligations under this Contract by circumstances beyond the reasonable control of either party (including without limitation any form of Government intervention, strikes and lock-outs relevant to the Order or breakdown of plant) such performance shall be suspended, and if it cannot be completed within a reasonable time after the due date as specified in the Order then the Contract may be cancelled by either party. We shall pay to You such sum as may be fair and reasonable in all the circumstances of the case in respect of work performed by You under the Order prior to cancellation but only in respect of work for which We have received full benefit as originally contemplated in the Contract. This provision can only have effect if it is called into operation by the party wishing to rely on it giving written notice to the other to that effect.

20. Articles on loan and use of information

- (a) All tools, materials, drawings, specifications and other equipment and data (“the Articles”) loaned by Us to You in connection with the Contract shall remain always Our property and be surrendered to Us upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by You solely for the purpose of completing the Contract. You agree that no copy of the articles will be made without the consent in writing of Our authorised officer. Until You return all the articles to Us they shall be at Your risk and insured by You at Your expense against the risk of loss, theft or damage. Any loss of or damage to such articles shall be made good by You at Your expense. All scrap arising from the supply of such articles must be disposed of at Our discretion and all proceeds of sales such as scrap must promptly be paid to Us in full.
- (b) Any information derived from our property or otherwise communicated to You in connection with the Contract shall be kept secret and confidential and shall not without the consent in writing of Our authorised officer, be published or disclosed to any third party, or made use of by You except for the purpose of implementing the Contract.

21. Ownership of Results

If the Contract involves design and/or development work:

- (a) All rights in the results of work arising out of or deriving from this Contract, including interventions, designs, copyright and knowledge shall be Our property and We shall

have the sole right to determine whether any letters patent, registered design, trademark and other protection shall be sought.

- (b) You shall promptly communicate to Us all such results and shall if requested and at Our expense do all acts and things necessary to enable Us or Our nominee to obtain letters patent, registered designs and other protection for such results in all territories and to assign the same to Us or Our nominee.
- (c) You shall ensure that all technical information (including computer programmes and programming information) arising out of or deriving from this Contract is held in strict confidence except for any such information that becomes public other than by breach of this Contract.

22. Infringement of intellectual property rights

With the exception of Goods made to Our design or instructions, You warrant that neither the Goods nor Our use of them will infringe any patent registered design trade mark copyright or other protected right and undertake to indemnify Us against all actions claims demands costs charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any such right.

23. Non observance of Condition

If You breach or fail to observe any provision of this Contract We may give You written notice of such breach or non-observance and you shall have 28 days from receipt of the notice in which to rectify the breach or non-observance. Should You fail to rectify the breach or non-observance, then We shall have the right to give You written notice terminating the contract with immediate effect.

24. Your insolvency

If You suffer the making of Interim Order or a petition is presented or an Order is made for You to become insolvent or You make an arrangement with Your creditors or have an administrator or an administrative receiver or a receiver and manager appointed of the whole or any part of Your undertaking property or assets or a petition is presented or an order is made or a resolution is passed or analogous proceedings are taken for You to be wound up (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by Us) or any distress or execution is levied upon any of Your Goods or property, We may, without replacing or reducing any other of Our rights, terminate the Contract with immediate effect by written notice to You or any person in whom the Contract may have become vested.

25. Assignment and Sub-letting

The Contract shall not be assigned by You nor sub-let as a whole. You shall not sub-let any part of the Contract without Our written consent, but We shall not refuse such consent unreasonably. The restriction contained in this condition shall not apply to sub-contracts for materials for minor details or for any part of which the makers are named in the Contract. You shall be responsible all work done and Goods supplied by all sub-contractors.

26. Corrupt Gifts

In connection with this or any other Contract between You and Us You shall not give, provide, or offer to Our staff and agents any loan, fee, reward, gift or any emolument or

advantage whatsoever. In the event of any breach of this Condition, We shall, without prejudice to any other rights We may possess, be at liberty forthwith to terminate this and any other Contract and to recover from You any loss or damage resulting from such termination.

27. Waiver

A failure at any time to enforce any provision of the Contract shall in no way affect the right at a later date to require complete performance of the Contract; nor shall the waiver of the break of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

28. Notice

All notices and communications required to be sent by You or Us in this contract shall be made in writing and sent by first class mail and if sent to You sent to Your registered or head office and if sent to Us sent to the Financial Controller, Eden Project, Bodelva PL24 2SG and shall be deemed to have reached the party to whom it is addressed on the next business day following the date of posting.

29. Amendment

No addition, alteration or substitution of these conditions will bind Us or form part of the Contract unless and until accepted in writing by Our authorised officer.

30. Law

This Contract shall be subject to English Law and the parties submit to the non-exclusive jurisdiction of the English Courts.

31. General

If at any time one or more of the Clauses (or any paragraph, sub paragraph or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from these conditions and the validity and/or enforceability of the remaining provisions of these Clauses shall not as a result of such deemed omission in any way be affected or impaired.

The Terms and clauses contained in these Conditions together with such other terms as are expressly incorporated in them by reference or otherwise agreed in writing by You and Us shall together constitute the entire agreement between You and Us relating to the purchase of the Goods and there shall be deemed to be incorporated and merged in such agreement any and all statements, representations promises, undertakings and warranties by or on behalf of and the parties of whatsoever nature and when so ever made. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.