

GLOBAL MATERIALS HANDLING PROJECTS LIMITED

STANDARD TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following terms shall have the following meanings, unless the context otherwise requires:

“Business Day”	any day which is not a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.
“Commencement Date”	has the meaning given in clause 2.1.
“Conditions”	these terms and conditions as amended from time to time in accordance with clause 22.
“Contract”	the contract between GMHP and the Supplier for the supply of Goods and/or Services incorporating the Order, these Conditions, the Goods Specification and/or the Services Specification.
“GMHP”	Global Materials Handling Projects Limited (company number 11911776) whose registered office is at Innovation Centre Innovation Way, Heslington, York, North Yorkshire, YO10 5DG.
“Deliverables”	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, plans, diagrams, designs, data, specifications and reports.
“Goods”	the goods (or any part of them) set out in the Order.
“Goods Specification”	any specification for the Goods, including any related plans and drawings, that is agreed in writing by GMHP and the Supplier.
“Order”	GMHP’s order for the supply of Goods and/or Services, as set out in GMHP’s purchase order form, or in GMHP’s written acceptance of the Supplier’s quotation, as the case may be.
“Services”	the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Order and the Service Specification.
“Service Specification”	the description or specification for Services agreed in writing by GMHP and the Supplier.
“Supplier”	the person or firm from whom GMHP purchases the Goods and/or Services, as identified in the Order.

1.2 In these Conditions, unless the context otherwise requires:

- 1.2.1 any term importing the singular includes the plural and vice versa;
- 1.2.2 a reference to a “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s successors and permitted assigns;
- 1.2.3 any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition or phrase preceding those terms; and
- 1.2.4 any reference to a clause is a reference to such clause of these Conditions;

1.3 Clause headings are for ease of reference only and shall not affect the interpretation of these Conditions.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by GMHP to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- 2.2.1 the Supplier issuing written acceptance of the Order; or
- 2.2.2 any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (the “Commencement Date”).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.4 All these Conditions apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:

- 3.1.1 correspond with their description and any applicable Goods Specification;
- 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by GMHP, expressly or by implication, and in this respect GMHP relies on the Supplier’s skill and judgement; and
- 3.1.3 be free from defects in design, materials and workmanship and remain so for 12 months after delivery.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 GMHP may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier’s obligations under the Contract.

3.4 If following such inspection or testing GMHP considers that the Goods do not comply or are unlikely to comply with the Supplier’s undertakings in clause 3.1, GMHP shall inform the Supplier and the Supplier shall immediately take such remedial

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action as is necessary to ensure compliance. GMHP may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods, any special storage instructions and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.3 it states clearly on the delivery note any requirement for GMHP to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

4.2.1 on the date specified in the Order or as otherwise agreed by the parties;

4.2.2 to such location as is set out in the Order or instructed by GMHP before delivery (the “**Delivery Location**”); and

4.2.3 during GMHP’s normal hours of business on a Business Day, or as instructed by GMHP.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 The Supplier shall not deliver the Goods in instalments without GMHP’s prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle GMHP to the remedies set out in clause 6.1.

4.5 Title and risk in the Goods shall pass to GMHP on completion of delivery.

5. SUPPLY OF SERVICES

5.1 The Supplier shall meet any performance dates for the Services specified in the Order or that GMHP notifies to the Supplier and time is of the essence in relation to any of those performance dates.

5.2 In providing the Services, the Supplier shall:

5.2.1 co-operate with GMHP in all matters relating to the Services, and comply with all instructions of GMHP;

5.2.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier’s industry, profession or trade;

5.2.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Contract;

5.2.4 ensure that the Services conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that GMHP expressly or impliedly makes known to the Supplier;

5.2.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

5.2.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to GMHP, will be free from defects;

5.2.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

5.2.8 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services; and

5.2.9 observe all health and safety rules and regulations and any other security requirements that apply at any of GMHP’s premises.

6. GMHP REMEDIES

6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, GMHP shall, without limiting or affecting other rights or remedies available to it, have any or all of the following rights:

6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

6.1.3 to recover from the Supplier any costs incurred by GMHP in obtaining substitute goods and/or services from a third party;

6.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and

6.1.5 to claim damages for any additional costs, loss or expenses incurred by GMHP which are in any way attributable to the Supplier’s failure to meet such dates.

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- 6.2 If the Supplier has delivered Goods that do not comply with clause 3.1, then, without limiting or affecting other rights or remedies available to it, GMHP shall have any or all of the following rights, whether or not it has accepted the Goods:
- 6.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.2.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - 6.2.3 to require the Supplier to repair or replace the rejected Goods, or, where GMHP have already made payment for the Goods (or any part thereof), to provide a full refund of the price paid for the rejected Goods;
 - 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 6.2.5 to recover from the Supplier any expenditure incurred by GMHP in obtaining substitute goods from a third party;
 - 6.2.6 to claim damages for any additional costs, loss or expenses incurred by GMHP arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.3 If the Supplier has supplied Services that do not comply with the requirements of clause 5.2 then, without limiting or affecting other rights or remedies available to it, GMHP shall have any or all of the following rights:
- 6.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.3.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;
 - 6.3.3 to require the Supplier to provide repeat performance of the Services, or, where GMHP have already made payment for the Services (or any part thereof), to provide a full refund of the price paid for the Services;
 - 6.3.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 6.3.5 to recover from the Supplier any expenditure incurred by GMHP in obtaining substitute services or deliverables from a third party;
 - 6.3.6 to claim damages for any additional costs, loss or expenses incurred by GMHP arising from the Supplier's failure to comply with clause 5.2
- 6.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.5 GMHP's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

7. GMHP'S OBLIGATIONS

- 7.1 GMHP shall:
- 7.1.1 provide the Supplier with reasonable access to premises at reasonable times for the purpose of providing the Services; and
 - 7.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.

8. CHARGES AND PAYMENT

- 8.1 The price for the Goods:
- 8.1.1 shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
 - 8.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods.
- No extra charges shall be effective unless agreed in writing and signed by GMHP.
- 8.2 The charges for the Services shall be set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by GMHP, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3 In respect of the Goods, the Supplier shall invoice GMHP on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice GMHP on completion of the Services. Each invoice shall include such supporting information required by GMHP to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.4 In consideration of the supply of Goods and/or Services by the Supplier, GMHP shall pay the invoiced amounts within 28 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5 All amounts payable by GMHP under the Contract are exclusive of amounts in respect of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to GMHP, GMHP shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services.
- 8.6 If GMHP fails to make a payment due to the Supplier under the Contract by the due date, then GMHP shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time.
- 8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow GMHP to inspect such records at all reasonable times on request.

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8.8 GMHP may at any time, without notice to the Supplier, set off any liability of the Supplier to GMHP against any liability of GMHP to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by GMHP of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All intellectual property rights in or arising out of or in connection with the Services shall be owned by the Supplier.

9.2 The Supplier grants to GMHP, or shall procure the direct grant to GMHP of, a fully paid-up, worldwide, non-exclusive, royalty-free and irrevocable licence to copy and use the Deliverables for the purpose of receiving and using the Services and the Deliverables. GMHP shall not sub-license, assign or otherwise transfer the rights granted by this clause 9.2 without the Supplier's written consent (not to be unreasonably withheld or delayed).

10. INDEMNITY

10.1 The Supplier shall indemnify GMHP against all liabilities, costs, expenses, damages and losses suffered or incurred by GMHP arising out of or in connection with:

10.1.1 any claim made against GMHP for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;

10.1.2 any claim made against GMHP by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and

10.1.3 any claim made against GMHP by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

11. INSURANCE

11.1 During the term of the Contract and for a period of 6 years after the completion of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on GMHP's request, provide documentary evidence that the insurance required pursuant to this clause 11.1 is being maintained.

12. CONFIDENTIALITY

12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except:

12.1.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract; and

12.1.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.2 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13. TERMINATION

13.1 Without affecting any other right or remedy available to it, GMHP may terminate the Contract for convenience with immediate effect by giving the Supplier seven days' notice.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

13.2.1 the other party commits a material breach of any the Contract and fails to remedy that breach within a period of ten Business Days after being notified in writing to do so;

13.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or

13.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

14. CONSEQUENCES OF TERMINATION

14.1 On termination of the Contract, the Supplier shall immediately deliver to GMHP all Deliverables whether or not then complete. If the Supplier fails to do so, then GMHP may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

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- 14.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry.
- 14.3 Any provision of the Contract that by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 15. FORCE MAJEURE**
- 15.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for one month, the party not affected may terminate the Contract by giving ten Business Days' notice to the affected party.
- 16. ASSIGNMENT AND OTHER DEALINGS**
- 16.1 GMHP may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- 16.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of GMHP.
- 17. NOTICES**
- 17.1 Any notice given to a party under or in connection with the Contract 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 (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Order.
- 17.2 A notice shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by email, at the time of sending.
- 18. SEVERANCE**
- 18.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 18 shall not affect the validity and enforceability of the rest of the Contract.
- 19. WAIVER**
- 19.1 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 20. ENTIRE AGREEMENT**
- 20.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21. THIRD PARTY RIGHTS**
- 21.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions.
- 22. VARIATION**
- 22.1 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 23. GOVERNING LAW AND JURISDICTION**
- 23.1 The Contract shall be governed by English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.