

# Conditions of Purchase Terms and Conditions

A MEMBER OF THE

**BYRNE** | GROUP

# Conditions of Purchase - Terms and Conditions

**THESE CONDITIONS MAY ONLY BE VARIED WITH THE WRITTEN AGREEMENT OF THE PURCHASER. NO TERMS OR CONDITIONS PUT FORWARD AT ANY TIME BY THE SUPPLIER SHALL FORM ANY PART OF THE CONTRACT.**

## **1.0 DEFINITIONS**

1.1 In these terms and conditions:

“Contract” means these terms and conditions;

“the Purchaser” means F.B. Ellmer Limited;

“the Supplier” means the supplier named in the Purchase Order;

“the Goods” means any such goods as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier’s Sub-contractors) pursuant to or in connection with this order (“the Order”).

“Order Addendum” means the F.B. Ellmer Limited’s authorized Order Addendum or series of Order Addendums, each Order Addendum having precedence over any earlier Order Addendum;

## **2.0 BASIS OF PURCHASE**

2.1 The Purchase Order constitutes an offer by the Purchaser to buy the Goods subject to these conditions. Any offer and/or acceptance of a Purchase Order by the Supplier shall be deemed to constitute an agreement to comply with these conditions.

2.2 The Supplier agrees to sell and the Purchaser agrees to purchase the Goods in accordance with the Contract. The Contract shall comprise (in order of precedence):-

(a) any Order Addendums;

(b) the Purchase Order;

(c) these conditions; and

(d) any other document (or part document) referred to on the Purchase Order.

2.3 The Contract shall not include any of the Suppliers’ conditions of sale, notwithstanding reference to them in any document. However, should the Contract be held by a court of competent jurisdiction to include the Suppliers’ terms and conditions of sale then in the event of any conflict or apparent conflict these conditions shall always prevail over the Supplier’s terms and conditions of sale.

2.4 Delivery of goods in response to a Purchase Order or Order Addendum shall be taken to imply that the Supplier has accepted these conditions.

## **3.0 THE GOODS/SERVICES**

3.1 The Goods or Services shall be to the reasonable satisfaction of the Purchaser and shall conform in all respect with any particulars specified in this Order and in any variations thereon.

3.2 The Goods shall conform in all respect with the requirement of any statutes, orders, regulation or bye-laws from time to time in force.

3.3 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the supplier by the Purchaser and the Purchaser relies on the skill and judgement of the supplier in the supply of the Goods and the execution of the Order.

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- 3.4 Under the Construction Products Regulation 2011, it is mandatory for manufacturers to draw up a Declaration of Performance and apply CE marking to construction products which are covered by a Harmonised European Standard (hEN) or conform to a European Technical Assessment (ETA) which has been issued for them, when such a product is placed on the market. Where the Goods fall under this Regulation, the Supplier shall ensure that the correct CE marking is applied to the Goods prior to delivery and that the Declaration of Performance is available for immediate transmission to the Purchaser upon request.
- 3.5 Counterfeit/fraudulent material is material whose origin, age, composition, configuration, certification status or other characteristics (including whether or not the material has been used previously) has been falsely represented. If the Purchaser identifies goods as counterfeit, fraudulent or suspect items (CFSI), the Purchaser will quarantine the goods and, working with the supplier, undertake an investigation. Should the investigation find the goods as counterfeit or fraudulent, the supplier will be informed, and the goods destroyed to prevent re-integration into the market.
- 3.6 Where the Goods that have been provided by the Supplier are under a Chain of Custody certification, all delivery notes and invoices for such Goods shall clearly state the Supplier's relevant Chain of Custody certification details and the description of the Goods shall include the correct Chain of Custody Scheme and, where applicable, the percentage claim, e.g. "FSC100%", "FSC Mix %", "FSC Mix Credit", "x% PEFC certified" etc. If certified & noncertified materials are included in the same delivery, the materials, delivery documentation & invoice must also clearly differentiate certified from non-certified materials.
- 3.7 In accepting, processing and delivering Goods pursuant to a Purchase Order from the Purchaser you thereby warrant that you will not supply timber or timber products that are sourced from any of the following sources:
- Wood harvested from forests where traditional or civil rights are violated.
  - Wood harvested from non-certified forest areas having high conservation values which are threatened.
  - Wood harvested from genetically modified (GM) trees.
  - Illegally harvested wood.
  - Natural forest that has been converted to plantations or non-forest use.
  - Forest areas protected by law (or planned to be so protected).
- 3.8 Where the Goods supplied are required to satisfy any performance requirements, for example fire, acoustic, slip and durability, then the Supplier will provide the evidence necessary to prove that the Goods comply with those performance requirements. Such evidence shall be presented forthwith by the Supplier upon request from the Purchaser and shall be in a format to satisfy the requirements of the Purchaser's construction contract under which he is supplying the Goods and so as to satisfy the requirements of any of the Purchaser's third party accreditations. If the Supplier is unable to comply with these requirements, then the Purchaser may subject the Goods to any tests necessary to prove that the Goods comply with the necessary performance requirements and all associated costs will become chargeable to the Supplier. In the event that the Goods fail to comply with the necessary performance requirements, then the Goods shall not be fit for purpose under clause 3.3 of these conditions.

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## 4.0 THE PRICE

- 4.1 The price of the Goods shall be as stated on the Purchase Order and no increase will be accepted by the Purchaser unless agreed by him in writing before the execution of the Order.
- 4.2 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment delivered under this Order. Payment shall be due 35 days after the last calendar day of the month in which the goods were delivered or the month in which the invoice was received, whichever is the later.

## 5.0 DELIVERY

- 5.1 The Goods shall be delivered to the place named on the Purchase Order. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with the delivery shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall indemnify the Purchaser in respect of any actions, suits, claims, demands, losses, charge costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors and their employees.
- 5.2 If the delivery of the Goods involves any works or services which the Supplier performs on any premises then the following conditions shall apply:-
- (a) the Supplier shall ensure that it and its employees, sub-contractors and their employees and any other person associated with it will adhere in every respect to the obligations imposed on it by relevant legal requirements, including current health and safety legislation; and
  - (b) the Supplier shall ensure that it will and its employees, sub-contractors and their employees and any other person associated with it will comply with any regulations from time to time in force on those premises and will be deemed to have full knowledge of such rules, regulations and requirements, copies of which shall be supplied on request.
- 5.3 Where any access to the premises is necessary in connection with delivery or installation the Supplier and his subcontractors shall at all times comply with the reasonable requirements of the Purchaser, including vehicle and personnel searches and project specific rules and regulations.
- 5.4 The date and time of delivery shall be of the essence and failure to deliver within the date and time promised or specified shall enable the Purchaser (at his option) to release himself from any obligation to accept and pay for the Goods and/or to cancel all or part of the order therefore, in either case without prejudice to his other rights and remedies.
- 5.5 Delivery by instalments shall not be accepted by the Purchaser unless previously agreed in writing. If Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable.

## 6.0 PROPERTY AND RISK

- 6.1 Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Purchaser (including the Purchaser's right and remedies under Condition 7 thereof) pass to the Purchaser at the time of delivery.
- 6.2 If the Purchaser makes any advance or stage payments, then at the time of such payment (and the Goods have been appropriated to the Contract), the Supplier must as soon as possible mark or otherwise identify the Goods as Purchaser property.

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## 7.0 DAMAGE IN TRANSFER

7.1 On dispatch of any consignment of the Goods the Supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:

(a) in the case of damage to such Goods in transit the Purchaser shall within thirty days of delivery give notice to the supplier that the Goods have been damaged.

(b) In case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the dispatch of the Goods) within fourteen days of the notified date of delivery give notice to the supplier that the Goods have not been delivered.

## 8.0 INSPECTION, REJECTION AND GUARANTEE

8.1 The Supplier shall permit the Purchaser or its authorized representative to make any inspection or test he may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at its premises. No failure to make complaint at the time of such inspection or test and no approval given during or after such test or inspection shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods.

8.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet requirements specified herein. Such notice shall be given within a reasonable time after delivery to the Purchaser of the Goods concerned. If the Purchaser shall reject any of the Goods pursuant to this condition the Purchaser shall be entitled (without prejudice) to his other rights and remedies either:

(a) to have the Goods concerned as quickly as possible either repaired or replaced by the Supplier with Goods which comply in all respect with the requirements specified herein: or

(b) to obtain a refund from the Supplier in all respects of the Goods concerned.

8.3 The guarantee period applicable to the goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangement agreed in writing between the Purchaser and the Supplier). If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any of other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.

8.4 Any Goods rejected or returned by the Purchaser as described in these conditions shall be returned to the Supplier at the Supplier's risk and expense including all costs associated with the installation, removal and replacement of the Goods together with the consequential costs to the Purchaser of the delay to the Purchaser's works under the construction contract under which he is supplying the Goods.

## 9.0 LABELLING AND PACKING

9.1 The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Order Number the net, gross and tare weight, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this condition.

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- 9.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged unless returned. The Purchaser accepts no liability in respect of the nonarrival at the Supplier's premises of empty packages returned by the Purchaser unless the Supplier shall within ten days of receiving notice from the Purchaser that the packages have been dispatched notify the Purchaser of such non-arrival.
- 9.3 Maximum use must be made of recycled materials in the manufacturing of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil other packing specifications. Packaging specifications should be reviewed periodically to ensure that no unnecessary limitation on the use of recycled materials exists.

## 10.0 PATENTS AND INFORMATION

- 10.1 It shall be a condition of this Order that, except to the extent that the Goods are made up in accordance with design furnished by the Purchaser, none of the Goods will infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property or any third party and the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of the condition.
- 10.2 All rights (including ownership and copyright) in any specification, instruction, plans, drawings, patterns, models, design or other materials furnished to or made available to the Supplier by the Purchaser pursuant to this Order shall remain vested solely in the Purchaser and the Supplier shall not (except to the extent necessary for the implementation of this Order) without prior written consent of the Purchaser use or disclose any such specification, instruction, plans, drawings, patterns, models, design or any information (whether or not relevant to this Order) which the Supplier may obtain pursuant to this Order and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the Order in any advertisement or article without the Purchaser's prior written agreement.

## 11.0 HEALTH AND SAFETY

- 11.1 The Supplier represents and warrants to the Purchaser that the Supplier has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that he has made available to the Purchaser adequate information about the use for which the Goods have been designed and have been tested and about any condition necessary to ensure that when put to use the Goods will be safe and without risk to health. The supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this condition.

## 12.0 INDEMNITY AND INSURANCE

- 12.1 Without prejudice to any rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 8 hereof) the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Supplier.
- 12.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these conditions and shall at the request of the Purchaser produce relevant policy or policies together with receipt or other evidence of payment of the latest premium due thereunder.

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## **13.0 RECOVERY OF SUMS DUE**

13.1 Whenever under this Order any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Order or under any other agreement or contract with the Purchaser.

## **14.0 ASSIGNMENT AND SUB-CONTRACTING**

14.1 The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of this Order or any part thereof.

14.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of his responsibilities under the Order.

## **15.0 NOTICES**

15.1 Any notice given under or pursuant to the Order may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile transmission, email or other means of telecommunication resulting in the receipt of a written communication and if so sent or transmitted to the address of the party shown on the face hereof, or to such other address as the party may by notice to the other have substituted thereof, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

## **16.0 TERMINATION**

16.1 The Purchaser shall be entitled to cancel the Purchase Order and any Order Addendum in respect of all or part only of the Goods by giving notice to the Supplier at any time prior to delivery without incurring any liability to the Supplier other than to pay for Goods already properly delivered at the time of such notice.

16.2 The Purchaser shall be entitled to terminate the Contract immediately without liability to the Supplier and reserving all rights of the Purchaser by giving notice to the Supplier at any time if:-

- (a) the Supplier is in material breach of any of its obligations under these conditions and that breach cannot be remedied; or
- (b) the Supplier is in material breach of a material obligation under these conditions which can be remedied, but the Supplier fails to do so within 30 days of being given notice of such breach; or
- (c) the Supplier commits more than one breach of any of its obligations under the Contract, the cumulative effect of such breaches being such that the Purchaser believes that the Supplier would continue to deliver a substandard performance over the one month period immediately after such breach; or
- (d) if the Supplier, being an individual or where the Supplier is a firm, any partner in that firm, shall at any time become bankrupt, or shall have a receiving order or administration order made against him or shall make any composition or arrangements with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or bankrupt, or any application shall be made under any bankruptcy act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him on behalf of his creditors; or

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- (e) if the Supplier, being a company, shall pass a resolution, or the court shall make an order, that the company shall be wound up, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the court of a creditor to appoint a receiver or manager, or which entitle the court to make a winding up order; or
- (f) the Supplier ceases, or threatens to cease, to carry on business, or substantially changes the nature of its business; or
- (g) the Purchaser reasonably believes that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

## **17.0 SPARE PARTS**

17.1 The Supplier shall ensure that all spare and/or replacement parts, components and materials for the Goods shall be available from the Supplier for 10 years from the date of first use by the Purchaser of the Goods in question, unless the Supplier provides the Purchaser with all drawings, plans, specifications and other technical data as the Purchaser reasonably believes are necessary to enable the Purchaser to manufacture such parts or the Goods.

## **18.0 WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WEEE)**

- 18.1 In accordance with the WEEE regulations, the Purchaser requires the Supplier and any of its agents, employees and sub-contractors to comply with the following terms:-
- (a) the Supplier agrees to finance the costs for collection, treatment, recovery and environmentally sound disposal of WEEE from products sold to the Purchaser;
  - (b) the Supplier warrants that its own practices and procedures comply with the legislation in respect of WEEE;
  - (c) the Supplier shall provide such information as required by the Purchaser in relation to its compliance and shall co-operate with any investigations by the Purchaser or by a body empowered to carry out such investigations under the relevant legislation;
  - (d) where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Supplier, its agents, employees or sub-contractors and where there is a finding against the Supplier in any such investigation or proceedings, the Supplier shall indemnify the Purchaser in full against any and all costs, charges and expenses (including legal and administrative expenses) incurred by the Purchaser during or in connection with any such investigation or proceedings and further indemnify the Purchaser for any compensation, damages, costs or other award the Purchaser may be ordered or required to pay to a third party; and
  - (e) without prejudice to its remedies set out above, the Purchaser may terminate the Contract if notice has been given to the Supplier of a substantial or persistent breach of this clause providing that a reasonable period has been given during which the breach may have been rectified and the Supplier has failed to remedy the breach within the stated period.

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## 19.0 CONFIDENTIALITY

- 19.1 The Supplier shall take every precaution to ensure that information about the Contract, or arising from or connected with the Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. No information regarding the Goods being provided under the Contract or facilities to photograph or film shall be given or permitted by the Supplier, except with prior written permission of the Purchaser, to any third party.
- 19.2 The Supplier shall not communicate with representatives of the general or technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the Purchaser.
- 19.3 The Supplier shall fully indemnify the Purchaser, its servants or agents against the costs of dealing with any claims made in respect of information subject to the Data Protection Act 1998, if such claims would not have arisen but for some act, omission or negligence on the part of the Supplier, its sub-contractors, agents or employees.

## 20.0 FORCE MAJEURE

- 20.1 If either party is delayed or prevented from performing its obligations under this Contract by circumstances beyond the reasonable control of either party (including but without limitation any form of government intervention, strikes and lock-outs relevant to the Purchase 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 Purchase Order, then the Contract may be cancelled by either party. The Purchaser shall pay to the Supplier such sum as may be fair and reasonable in all the circumstances of the case in respect of work performed by the Supplier under the Purchase Order prior to cancellation but only in respect of work that the Purchaser has received full benefit of as originally contemplated in the Contract. This provision can have effect only if it is called into operation by the party wishing to rely on it giving written notice to the other to that effect.

## 21.0 BRIBERY ACT

- 21.1 The Purchaser operates a Bribery & Corruption Policy throughout its business. The Supplier accepts that it will conform to that Policy.
- 21.2 The Supplier warrants that:
- 21.2.1 It will not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
- 21.2.2 It has and will maintain in place adequate procedures (adequate procedures as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010), designed to prevent any associated person (associated person meaning the Supplier's persons and persons of any related company of the Supplier where related company means any Subsidiary Undertaking of the Supplier, any Parent Undertaking of the Supplier and any Subsidiary Undertaking of that Parent Undertaking where the expressions Parent Undertaking and Subsidiary Undertaking have the meaning given to them in Section 1162 of the Companies Act 2006 and undertaking has the meaning given to it in Section 1161 of that Act) from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;
- 21.2.3 From time to time, at the reasonable request of the Purchaser, it will confirm in writing that it has complied with its undertakings under this clause 21 and will provide any information reasonably requested by the Purchaser in support of such compliance; and
- 21.2.4 It will inform the Purchaser, as soon as it becomes aware of same, of any potential or actual breach of this clause 21.

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## **22.0 MODERN SLAVERY ACT**

22.1 The Purchaser operates an anti-slavery and human trafficking policy throughout its business. The Supplier accepts that it will conform to that policy. The Supplier will not engage in any activity, practice or conduct which would constitute an offence under the Modern Slavery Act 2015. From time to time, at the reasonable request of the Purchaser, the Supplier will confirm, in writing, that it has complied with its undertaking under this clause and will provide any information reasonably requested by the Purchaser in support of such compliance. The Supplier will inform the Purchaser as soon as it becomes aware of any potential, or actual, breach of this clause.

## **23.0 EQUAL OPPORTUNITIES**

23.1 The Purchaser operates an Equal Opportunities Policy throughout its business. The Supplier accepts that it will conform to that Policy.

## **24.0 WAIVER**

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

## **25.0 ENFORCEABILITY**

25.1 If any part of these Conditions is held by any competent authority to be unenforceable or invalid in whole or in part the remainder of the provision and the validity of the other provisions in these Conditions shall not be affected.

## **26.0 THIRD PARTY RIGHTS**

26.1 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **27.0 AMENDMENT AND ORDER ACKNOWLEDGEMENTS**

27.1 No addition, alteration or substitution of these Conditions will bind the Purchaser or form part of the Contract unless and until accepted in writing by the Purchaser. For the avoidance of doubt, the signing or accepting by the Purchaser of any form of Order Acknowledgement from the Supplier does not mean that the Purchaser accepts or is bound by any of the Suppliers terms or conditions referred to or stated therein.

## **28.0 HEADINGS**

28.1 The headings to Conditions shall not affect their interpretation.

## **29.0 LEGISLATION AND POLICIES**

29.1 All legislation referred to in these Conditions should be read as the legislation in its current/amended format.

29.2 All policies referred to in these Conditions can be viewed and downloaded from the Resources page of the Ellmer Construction website - <https://www.ellmers.co.uk/resources/95/>

## **30.0 GOVERNING LAW**

30.1 These Conditions shall be governed by and construed in accordance with English law and the Supplier hereby irrevocably submits to the jurisdiction of the English courts. The submission to such jurisdiction shall not (and not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any way one or more jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.