

# **Simmal Limited**

## **Purchasing Terms and Conditions**

### **1 Definitions**

- 1.1 "Company" shall mean Simmal Limited (company number 01741450) and whose registered office is at Unit 479 Walton Summit Centre, Bamber Bridge, Preston, PR5 8AX.
- 1.2 "Delivery" shall mean the time at which the Supplier provides the Goods or Services to the Company at the address specified in the Purchase Order.
- 1.3 "Goods" shall mean the goods as described in the Purchase Order, the provision of which is the subject of these Terms.
- 1.4 "Intellectual Property" includes letters patent, trade marks whether registered or unregistered, registered or unregistered designs, utility models, copyrights including design copyrights applications for any of the foregoing and the right to apply for them in any part of the world, discoveries, creations, inventions or improvements upon or additions to an invention, confidential information, know-how and any research effort relating to any of the above mentioned business names whether registrable or not moral rights; and any similar rights in any country.
- 1.5 "Services" shall mean the services as described in the Purchase Order, the provision of which is the subject of these Terms.
- 1.6 "Supplier" shall mean the primary Supplier of Goods or Services that are being acquired pursuant to these Terms.
- 1.7 "Purchase Order" shall mean the written order for goods or services placed by the Company with the Supplier and which together with the terms and conditions set out herein shall form a binding contract on the parties.
- 1.8 "Terms" shall mean the terms and conditions contained herein.

### **2 Application of Conditions**

- 2.1 These Terms shall apply to all Purchase Orders unless expressly agreed in writing by an authorised officer of the Company, setting out in full the reasons for changes and alterations.
- 2.2 The Supplier shall confirm acceptance of the Terms and Purchase Order in writing but where acceptance has not been expressly communicated to the Company, delivery by the Supplier of the Goods or Services shall constitute acceptance of the Terms and of the Purchase Order.

### **3 Prices**

- 3.1 The prices for Goods and/or Services detailed on the Purchase Order shall be the price payable by the Company for the Goods and/or Services ("the Price") and unless otherwise specified by the Company, all Prices are fixed and are not subject to changes.

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- 3.2 The Company shall not be obliged to pay any sum in excess of the Price unless such sum has been agreed in advance by an authorised officer of the Company upon a written request for a variation of the Price by the Supplier. For the avoidance of doubt the Company shall not be responsible for the payment of any charges for Services or Goods provided which are in excess of the Goods or Services set out in the Purchase Order, unless written authorisation has been given in advance by an authorised officer of the Company.

#### **4 Payment**

- 4.1 Following Delivery of the Goods and/or Services in accordance with the Purchase Order and these Terms, the Supplier shall present an invoice (quoting the Purchase Order number) for the Price to the Company. If the Supplier does not issue its invoice within 6 months of the date of supply of the Goods and/or Services, it shall no longer be entitled to issue an invoice for the Price.
- 4.2 Payment by the Company of the invoice issued pursuant to clause 4.1 above shall be made in accordance with the terms for payment as set out in the Purchase Order and in any event, the Company shall not be obliged to make payment until it is satisfied that the Purchase Order has been properly and completely fulfilled.

#### **5 Delivery**

- 5.1 Where the time and date for a Delivery of the Goods or Services are not specified in the Purchase Order, the Supplier shall propose a time and date for Delivery within 48 hours of receipt of the Purchase Order. The Company shall be entitled to object to the proposed time and date and request an alternative time and date for Delivery which the Supplier will use its best endeavours to accommodate. The Supplier shall confirm within 48 hours whether it is able to accommodate the Company's preferred time for Delivery.
- 5.2 The Supplier shall deliver the Goods and/or Services to the location specified in the Purchase Order at the time and date specified either in the Purchase Order or in accordance with clause 5.1 and time shall be of the essence in respect of this clause.
- 5.3 Where delivery is not made in accordance with the time and date specified in the Purchase Order or pursuant to clause 5.1, and such failure has not been expressly allowed for in writing by an authorised officer of the Company, then the Company reserves the right to consider the contract created by the Purchase Order repudiated in whole or in part.
- 5.4 The Company shall be entitled to recover any loss, damage or expense incurred by the Company by reason of any delay or failure to deliver.
- 5.5 A detailed delivery note quoting the Company's Purchase Order number is required for each consignment of Goods and or Services provided and any consignment Delivered without such a note may be refused by the Company.
- 5.6 Where the Company raises any queries on a delivery note or invoice, the Supplier shall respond to the query within 48 hours of it being made otherwise the Company shall be entitled to reject the Goods and will not be obliged to make payment for any such rejected Goods.

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- 5.7 If upon Delivery the Company considers that the Purchase Order has not been properly and completely fulfilled, the Company shall be entitled to either;
- 5.7.1 delay payment until 14 days after the Supplier has properly and completely fulfilled the Purchase Order to the satisfaction of the Company; or
  - 5.7.2 Reject the Goods and/or Services in which case the Company shall not be obliged to pay for any of the Goods or Services that may have been delivered.

**6 Packaging and Identification**

- 6.1 All Goods shall be delivered from the Supplier to the Company in such a manner as to ensure that it meets any specific arrangements detailed in the Purchase Order.
- 6.2 All Goods must be supplied packaged to ensure that they are “fit for purpose” and to avoid any transit damage. All Goods delivered under these Terms and the Purchase Order must be clearly identified, indicating the Purchase Order number, quantity, description and Supplier’s lot number for traceability purposes.
- 6.3 Where mixed Goods are supplied on a pallet, this must be clearly indicated on the packaging and on the delivery note.

**7 Title and Risk**

The property in the Goods purchased shall pass to the Company upon Delivery but risk shall not pass until the Goods have been inspected by the Company and the Company has declared that the Goods are compliant with the Purchase Order.

**8 Inspection**

- 8.1 The Company or any appointed inspector or representative authorised by the Company shall be entitled to inspect the Goods or work in progress at the Supplier’s works, or where applicable, the works of a sub-Contractor.
- 8.2 Any such inspection pursuant to clause 9.1, or the right to inspect does not constitute in any way, an acceptance of the Goods, nor shall it absolve the Supplier of his responsibility to provide an acceptable and compliant product, nor shall it preclude subsequent rejection by the Company.

**9 Intellectual Property**

- 9.1 The Intellectual Property rights in any documents, materials, drawings, specification product or other document or item provided to the Supplier by the Company, belongs to the Company and any Intellectual Property in any improvements or alterations the Supplier makes to such items shall also belong to the Company.
- 9.2 The Supplier undertakes to execute such documents and take such action, as the Company shall reasonably require, assigning to the Company or confirming the Company’s ownership of any Intellectual Property right in any item referred to in clause 9.1 above, subject to the Company paying the Suppliers reasonable costs of doing so.

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**10 Company Furnished Materials, Tooling and Equipment**

- 10.1 Title to, and any materials, tooling and equipment and patterns, mould tools and dies, or templates, which the Company may furnish to a Supplier or which the Supplier may acquire at the Company's expense or manufacture for the Company, shall remain with the Company at all times.
- 10.2 The Supplier assumes all liability for risk of loss or damage to such property from whatever cause, and for any consequential loss suffered by the Company as a result of such loss or damage, whilst in the possession of the Supplier.
- 10.3 The Supplier shall have in place adequate insurance to cover all potential risks to the items referred to in 10.1.
- 10.4 The Company has the right to remove the property referred to in 10.1 from the Supplier at any time for any reason and as such has the right to enter the Supplier's premises and remove the property, so protecting its rights in that property.
- 10.5 If requested by the Company the Supplier must deliver forthwith the property referred to in 10.1 into the hands of the Company in an agreed manner.

**11 Quality and Warranties**

- 11.1 All Suppliers will have an effective and compliant ISO 9001 Quality Management System to ensure the Company's requirements are met.
- 11.2 The Supplier shall ensure that all Goods and Services detailed by the Purchase Order are delivered in the correct quantity, to the correct specification and incorporate any particular stipulations set out in the Purchase Order.
- 11.3 Goods and/or packaging supplied by the Supplier to the Company shall not include any Supplier's markings, other than those expressly agreed by the Company in the Purchase Order.
- 11.4 The Supplier hereby warrants that it has expertise and experience in the manufacture of the Goods and/or provision of the Services that are to be provided pursuant to the Purchase Order and hereby warrants the accuracy of all statements and representations made in respect of the Goods and Services whether made before or after the date of the Purchase Order.
- 11.5 Where there is a defect in the Goods provided, the Company shall, at its option, be entitled to either require the Supplier to perform the obligations contained in these Terms, or reject the Goods and treat the contract created by the Purchase Order as repudiated at any time.
- 11.6 Where any Goods are rejected by the Company pursuant to these Terms the Supplier shall bear all costs of disposal, storage, or return of such Goods or rectification of workmanship as the case may be and where the Company undertakes any remedial works, the Supplier shall indemnify the Company at a rate of £1 (one pound) per minute per employee for all work undertaken.

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11.7 The Supplier shall be responsible for making good any defective or damaged Goods or faulty workmanship including full replacement, where necessary, together with all costs of delivery to site and all other costs incurred by the Company arising out of the issue which is in breach of the Purchase Order or these terms and the Supplier shall use its best endeavours to provide such remedy and indemnity as soon as practicable after notification of the defect in Delivery. Should the Company request a credit from the Supplier this shall be settled no later than the 20<sup>th</sup> day of the month in which the Delivery of the Goods was taken or where the Delivery was after the 20<sup>th</sup> day of the month, by the 20<sup>th</sup> day of the following month.

**12 Publicity**

The Supplier shall use neither the Purchase Order nor the name of the Company for any publicity purpose without the express consent of an authorised representative of the Company.

**13 Indemnity**

13.1 The Supplier shall indemnify the Company against any claims made or threatened against the Company for infringement of any patent, copyright, registered design, trade mark or other Intellectual Property by reason of the use or sale of the Goods supplied by the Supplier and against all losses (including loss of profits and whether direct or indirect losses), costs, damages, expenses and claims which the Company may incur, or for which the Company may become liable, as a result of such claims for infringement.

13.2 The Supplier shall indemnify the Company against all losses (including loss of profits and whether direct or indirect losses), claims, costs, damages and expenses howsoever caused which the Company suffers as a result of any breach of these Terms or the Purchase Order by the Supplier.

13.3 Where the Supplier sub-contracts the provision of any Goods or Services to be supplied pursuant to the Purchase Order, the Supplier shall be responsible for the actions of that sub-contractor as though the Supplier itself was providing the Goods and/or Services directly to the Company. Where any sub-contractor does not comply with these Terms or the Purchase Order the Supplier shall indemnify the Company for any loss howsoever caused suffered by the Company and the Supplier shall not have a defence to a breach of these Terms or the Purchase Order where such breach is caused by any sub-contractor.

**14 Change**

14.1 The Company may at any time, make written changes to the scope of the Contract, the design or specification of the Goods and/or Services, and the Supplier will comply with such changes in the fulfilment of the Purchase Order.

14.2 If the change impacts on the time for Delivery or the Price to be paid for the Goods or Services, this must be communicated and agreed upon with the Company. If no such communication is made, the Price and Delivery as set out in the Purchase Order will continue to be binding on the parties.

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**15 Termination**

- 15.1 The Company shall have the right to terminate the contract created by the Purchase Order in whole or part at any time by giving written notice to the Supplier, whereupon all work on the Purchase Order shall be priced as may be fair and reasonable having regard to the value of the work done, the Services provided and/or the Goods delivered under the Purchase Order and the Supplier shall provide an invoice for this sum in accordance with clause 4.1 and the Company shall settle the invoice in accordance with clause 4.2.
- 15.2 In such event, no further sum or sums shall be due by way of damages, loss of profits or otherwise from the Company to the Supplier by virtue of such termination.

**16 English Law**

This Agreement is governed by and to be construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts.

**17 Notice**

- 17.1 Any notice to be served on either of the parties by the other must be sent by prepaid recorded delivery or registered post and shall be deemed to have been received by the addressee within 72 hours of posting or if delivery would be deemed to occur on a day that is not a working day then delivery shall be deemed to occur on the next working day.

**18 Assignment**

The contract created by the Purchase Order shall not at any time be assignable by either party without the prior written consent of the other.

**19 Severance**

In the event that any provision of these Terms or the Purchase Order is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without the illegality, in default of which at the discretion of the Company it may be severed from this Agreement in which event the remaining provisions of the Agreement shall remain in full force and effect.

**20 Third Parties**

It is the intention of the parties that persons not party to these Terms shall not have any rights in relation to them under the Contracts (Rights of Third Parties) Act 1999.

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**21           Waiver**

The failure of the Company at any time or times to require performance of any provision hereof shall not affect the Company's right to enforce such provision at a later time. No waiver by the Company of any conditions or the breach of any term covenant representation or warranty contained in these Terms in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or be deemed to be or construed as a waiver of the breach of any other term covenant representation or warranty in these Terms.

**22           No Partnership**

The parties are not partners or joint ventures nor is either party able to act as agent of the other save as authorized by this Agreement.