

Purchasing terms and conditions

1. General

These terms and conditions (“Terms”) apply to every Purchase Order placed by Bowman Power Group Ltd (“Buyer”) with any individual, firm or company (“Supplier”) for goods. In these Terms “Purchase Order” shall mean the Buyer’s written acceptance of an offer for, or a request for, the supply of goods, incorporating these Terms and “Goods” shall mean the goods (including any instalment of the goods or any part of them) described in the Purchase Order. “Contract” means the contract for the sale and purchase of the Goods.

No terms or conditions, in or attached to any catalogue, or other sales literature, or document, e.g. tender, invoice, order acknowledgement, despatch/delivery advice note from the Supplier which are inconsistent with these terms and conditions or which purport to add to or vary them in any way, shall have any effect unless expressly accepted by the Buyer in writing. In the absence of such acceptance, the Supplier shall be deemed to have withdrawn or waived their terms or conditions and to contract solely on the basis of the Buyer’s terms & conditions, and acceptance of any Goods shall not constitute, or be deemed to constitute, acceptance by the Buyer of the Supplier’s terms or conditions.

2. Assignment

The Supplier shall not assign or transfer any Purchase Order from the Buyer or the benefit of any Purchase Order to any third party except with the written consent of the Buyer.

3. Price variation

Any price for Goods quoted by the Supplier and accepted and ordered by the Buyer shall not be varied prior to the full delivery of Goods and the Purchase Order is deemed complete. Any variation of price shall not be deemed accepted by the Buyer unless agreed in writing between the Supplier and the Buyer.

4. Changes/Cancellation

The Buyer shall have the right, at any time and from time to time without fault or default by the Supplier or other cause, to cancel all or any part of the undelivered portion of Purchase Orders by giving notice of such cancellation to the Supplier. In the event of such cancellation and as the Buyer’s sole liability for such cancellation and with the Buyer’s prior written agreement, the Buyer shall reimburse the Supplier for its actual cost of labour and materials theretofore used by the Buyer in respect of the cancelled order. The materials, so paid for, shall either be shipped to the Buyer or actioned as per the Buyer’s instructions in writing between the Supplier and the Buyer.

5. Extra charges

All extra charges of any kind, including but not limited to insurance, packing, certification, delivery etc., will be borne by the Supplier unless otherwise expressly provided for in the Purchase Order or unless otherwise agreed in writing with the Buyer.

6. Delivery

All Goods or materials ordered by the Buyer shall remain at the risk of the Supplier until acceptance by the Buyer upon delivery to such destination as the Buyer shall specify in the Purchase Order; unless agreed otherwise and such variation is incorporated into the Purchase Order.

Failure to deliver by the date specified on the Purchase Order shall entitle the Buyer to cancel the order without notice.

Deliveries shall conform to the respective Purchase Orders received from the Buyer as to quantity, quality, specification and description, and if not so compliant, the Buyer is entitled at its option either to return the same to and at the risk of the Supplier, or accept the whole or any part of the Goods delivered by the Supplier, but without prejudice to any rights of the Buyer, to claim compensation or damages for loss or damage suffered as a result of such failure to comply.

In the event that the Supplier delivers Goods not complying with the Buyer's Purchase Order or these Terms, the Supplier shall have up to 10 working days of being notified in writing by the Buyer of any discrepancy or defect to remedy the same. If the Supplier fails to remedy the discrepancy or defect within this period and/or collect the Goods, the Buyer will arrange the return of the Goods to the Supplier at the Supplier's expense, and an administration fee of £30 per defective line item will be charged by the Buyer. This will be charged in the form of either a debit note against outstanding payments to the Supplier, or a credit note is to be issued by the Supplier against the invoice issued by the Buyer if no debt balance exists against the Supplier's account.

7. Acceptance of Goods

Materials, services and Goods shall be received subject to the Buyer's right to inspect, test, and approve all such materials and Goods at destination, before acceptance or payment. The Buyer has the right to withhold payment for and to reject any Goods, materials or services which in the Buyer's opinion are defective or do not conform to the related Purchase Order.

Such reasons include, but are not limited to, condition of containers, lack of certification or lack of required supporting documentation as per the Purchase Order. The Supplier shall pay transportation costs and the cost of inspecting, testing, and returning all materials, Goods or services that are rejected.

8. Notification of Defects and Remedies

The Buyer shall notify the Supplier promptly of any discrepancy or alleged damage to Goods in transit, or defect arising within the warranty period and shall afford to the Supplier reasonable facilities for the inspection and collection of the same or will if so required by the Supplier return the Goods or materials at the risk and cost of the Supplier.

The Supplier shall, without delay and within a reasonable time period set by the Buyer, at his own discretion repair or replace any defective Goods. The Supplier is responsible for ensuring that any repair or replacement of the Goods is performed with adequate skill and expertise.

The Supplier shall bear all costs and expenses relating to the repair or replacement of defective Goods including, but not limited to, any design, engineering, manufacturing, transportation, dismantling and installation costs as well as any travel, lodging or other personnel expenses.

Should the Supplier fail to remedy any defect in the Goods without delay and within the time period indicated by the Buyer, the Buyer shall be entitled in emergency situations to remedy such defect at the cost of the Supplier. Any repair or replacement of defective Goods performed by the Buyer in accordance herewith shall not release the Supplier from any responsibility under the warranty undertaking of the Supplier in regard to repaired or replaced Goods provided that such repair or replacement has been performed in accordance with the instructions of the Supplier or otherwise with adequate skill and expertise. Minor defects, the remedy of which cannot be delayed and which does not require special expertise possessed by the Supplier, may be remedied forthwith by the Buyer at the cost of the Supplier provided that the Buyer without delay informs the Supplier in writing of the defect as well as the remedy.

If: the defect in the Goods is significant and the Supplier has failed to remedy the defect within the time period indicated by the Buyer above; or the defect or similar defects, despite measures taken by the Supplier, have proved to be repetitive, and in any event affect at least ten percent (10%) of Goods or materials delivered in any one month period ("Epidemic Fault"), then the Purchaser shall be entitled to cancel the Purchase Order entirely or in part and seek indemnification from the Supplier for any losses arising in accordance with Clause 11.

9. Force Majeure

Notwithstanding anything contained in these Terms neither the Buyer nor the Supplier shall be liable for any loss, damage or expense suffered or incurred by one party if by reason of fire, accident, wars, strikes, lockouts or any restriction or prohibition imposed by the Government or any duly authorised authority which could not reasonably have been prevented or avoided by the Buyer or the Suppliers as the case may be, either:-

- (i) The Buyer is prevented from or delayed in accepting delivery of any Goods or any part of a delivery or in paying for the same or any part of a delivery at the due time; or
- (ii) The Supplier is prevented from or delayed in the supply of any Goods ordered by the Buyer.

10. Invoices

Following each shipment of materials or Goods under a Purchase Order, Supplier shall send a separate invoice to Buyer's office designated on the Purchase Order. Invoices shall contain the following information as applicable: Buyer's Purchase Order Number, item number, descriptions of all materials and Goods, sizes, weights, quantities, unit and total prices, destination, any consignees, any routing and freight information, and any other information required by other provisions of the related Purchase Order. Unless otherwise stated in the Purchase Order the Buyer shall pay the price of the Goods within 60 days of delivery to the Buyer of an invoice, or if later, after acceptance of the Goods in question by the Buyer. Payment shall not be of the essence of the Contract. Without prejudice to any other right or remedy, the Buyer shall be entitled to set off against the price of the Goods, any sums owed to the Buyer by the Supplier.

11. Warranties and Indemnity

The Supplier warrants to the Buyer that the Goods:-

- (i) will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier in writing before or at the time the Purchase Order is placed.
- (ii) will be free from defects in design, material and workmanship.
- (iii) will correspond with any relevant specification or sample; and
- (iv) will comply with all statutory requirements and regulations relating to the sale of Goods.

The Supplier shall indemnify the Buyer against death or injury or any loss damage or expense suffered or incurred whether directly or indirectly (including, but not limited to loss of production, loss of profit, loss of reputation and goodwill) as a result of:-

- (i) any breach of any warranty given by the Supplier in relation to the Goods;
- (ii) any infringement of any letters patent registered design or trademark arising out of the sale or use of the Goods supplied by the Supplier;
- (iii) any defect in the Goods whether in the materials design construction or delivery of them giving rise to personal injury or death;
- (iv) failure of the Goods to comply with the requirements of any statute statutory instrument or other order generally applicable in England and Wales, including but not limited to, any liability under the Consumer Protection Act 1987 in respect of the Goods; or
- (v) Epidemic Fault as defined in Clause 8.

12. Production Arrangements

The Supplier agrees with and undertakes to the Buyer:

- (i) not to alter the location or productive capacity of its facilities used for the manufacture of the Goods;
- (ii) not to change, or permit to be changed, any element of the manufacturing process used by it to produce the Goods; and

- (iii) not to use any subcontractor for the manufacture of Goods or of any components used within them;
- (iv) without the prior written consent of the Buyer (which the Buyer will not unreasonably delay or withhold, following to its receipt of such information concerning the subject matter of the applicable alteration, change or use as the Buyer may reasonably request).

13. Insurance

The Supplier agrees to provide to the Buyer, on request, a certificate from the Supplier's insurance provider showing that Supplier carries public liability, professional indemnity, where applicable and property damage insurance coverage acceptable to Buyer.

14. Confidentiality

Any information or data (whether in written or any other tangible form, including magnetic or electronic media, or in any intangible form, including oral or visual) provided by Buyer to Supplier shall be and will remain the property of Buyer. The Buyer and the Supplier shall treat all confidential information belonging to the other party as confidential and safeguard it accordingly; and shall not disclose or use any confidential information belonging to the other party or to any other person without the prior written consent of the other party except to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract or is permitted under the Freedom of Information Act 2000. The Supplier must always seek the Buyer's permission before divulging any confidential or sensitive information or data to any other party.

The Buyer will determine at its absolute discretion whether information should be disclosed under the Freedom of Information Act 2000.

All Confidential Information in tangible form shall be returned to Buyer promptly on request.

15. Waiver and Severance

No waiver by the Buyer of any of these Terms shall be deemed to be or shall constitute a waiver of any other term or condition herein, whether or not similar, nor shall any such waiver constitute a waiver of any subsequent failure, delay or breach by the Supplier.

The invalidity, illegality, voidness, unenforceability or unreasonableness in whole or in part of any clause in these Terms shall not affect the validity of the remainder of such clause or these Terms.

16. Termination

The Buyer may terminate the Contract without liability to the Supplier by giving notice to the Seller at any time if:-

- (i) the Supplier commits a material breach of any of these Terms; or
- (ii) any distress, execution of other process is levied against the assets of the Supplier; or
- (iii) the Supplier has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors; or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation,

or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the Court for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any Court for the winding up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or
- (iv) the Supplier ceases or threatens to cease to carry on its business; or

- (v) the financial position of the Supplier deteriorates to such an extent that in the opinion of the Buyer the capability of the Supplier to adequately fulfil its obligations under the Contract has been put in jeopardy.

The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Buyer accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

17. Amendment to Terms and Conditions

These terms and conditions may not be varied by the Supplier except by written agreement, signed by the duly authorised representatives of the Buyer and the Supplier.

18. Separately negotiated contracts

These terms and conditions will apply unless the Buyer and the Supplier negotiate separate terms and conditions. If such terms and conditions are negotiated and agreed between Buyer and Supplier, those terms and conditions will override these standard terms and conditions. Those separate terms and conditions will be referred to on the Purchase Order.

19. Third Party Rights

The parties to the Contract do not intend that any terms of the Contract will be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.

20. Applicable Law

These Terms shall be subject to and construed in accordance with English Law, with all parties submitting to the exclusive jurisdiction of the English Courts.