

ANNEX 11a to the Supply Chain Management Manual:

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES



This Annex provides a **standard** set of Terms and Conditions to be used with a Purchase Order – refer to Annex 11b for a Purchase Order template.

The following points should be noted:

- **Mandatory** paragraphs are shown in “black”, noting that if these were removed then significant contractual provisions will be lost.
- **Recommended** paragraphs are shown in blue (with an * at the end of the heading line) – their use will depend on the context and type of procurement being considered. In the event that one or more of these clauses are not required then they can simply be deleted.
- **“Buyer”** refers to CAFOD or CAFOD’s partner, and can be replaced by an alternative term that is locally applicable, for example Purchaser, Principal or Contractee.
- **“Seller”** refers to the organisation or individual providing the goods and/or services, and can be replaced by an alternative term that is locally applicable, for example Contractor, Supplier or Vendor.

NOTE: That while these Terms and Conditions have been drafted from a legal perspective to be non-country specific, they have been prepared by UK lawyers with expertise in English law.

One change that has been made to the UK lawyer’s version has been the replacement of “warrants and represents” with the term “commits”.

Before these Terms and Conditions are used outside of the UK they should be reviewed by lawyers from the country under whose jurisdiction the Terms and Conditions will fall.

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES



1. DEFINITIONS AND INTERPRETATIONS

1.1 Defined terms

In these Conditions:

"Authorised Representative(s)" means those persons specified in the Order by the Buyer and the Seller;

"Buyer" means the purchasing entity specified in the Order;

"Conditions" means the standard terms and conditions of purchase set out below;

"Goods" means the goods (including any instalment of the Goods or any part of them) described in the Order;

"Order" means the Buyer's purchase order to which these Conditions are annexed;

"Price" means the price of the Goods and/or Services specified in the Order;

"Seller" means the selling entity specified in the Order;

"Services" means the services (or any part thereof) described in the Order; and

"Specification" includes any plans, drawings, data or other information relating to the Goods and/or Services (if any) included within or annexed to the Order.

1.2 Headings

The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF PURCHASE

2.1 Offer to purchase/acquire

The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Conditions.

2.2 Application of Conditions

These Conditions shall apply to the purchase by the Buyer of the Goods and/or Services from the Seller to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3 Variations to an Order

No variation to the Order or these Conditions shall be binding unless agreed in writing between the Authorised Representatives of the Buyer and the Seller.

2.4 Responsibility for Orders

The Buyer will not accept responsibility for any Order unless it is duly signed by the Authorised Representative of the Buyer.

3. SPECIFICATIONS

3.1 Quantity, quality and description

The quantity, quality and description of the Goods and Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification annexed to the Order.

3.2 Compliance with Specifications

The Seller shall comply with all Specifications (if any) concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

3.3 Property of Buyer *

Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, together with the copyright, design rights or any other intellectual property right or right of a similar nature in the Specification, shall be the exclusive property of the Buyer and shall be returned to

the Buyer in good order and condition on delivery of the Goods or upon the provision of Services (as the case may be) if the Buyer so requests. The Seller shall not disclose any such Specification to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the supply.

3.4 **Marking and packaging of Goods ***

The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.



4. **INSPECTION AND TESTING**

4.1 **Inspection of Seller's premises ***

The Buyer shall have the right to enter the Seller's premises to:

- (a) inspect the manufacturing facilities and the equipment used by the Seller in the manufacture of the Goods;
- (b) take samples of the Goods specified in the Order;
- (c) inspect and take stock levels of raw materials, the Goods or packaging.

4.2 **Results of inspection ***

If following an inspection, the Buyer reasonably considers that the Goods are not or are not likely to be as committed to under Condition 9, the Buyer shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure that the Goods are or will be as committed to under Condition 9. The Buyer shall have the right to re-conduct inspections and take further samples after the Seller has carried out its remedial actions.

4.3 **Liability of Seller ***

Such inspection or testing shall not relieve the Seller from responsibility, liability, and/or such guarantees as may be arranged, nor be interpreted so as in any way to imply acceptance of such Goods and materials.

5. **PRICE**

5.1 **Calculation of Price**

The Price shall be as stated in the Order and, unless otherwise expressed in the Order or agreed in writing, shall be:

- (a) exclusive of any applicable value added tax or any tax of similar effect (which shall be payable by the Buyer subject to receipt of a VAT invoice or an invoice of similar effect); and
- (b) inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the delivery address and any duties, imposts or levies other than value added tax or a tax of similar effect.

5.2 **Increase in Price**

No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.

6. **TERMS OF PAYMENT**

6.1 **Invoices**

The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or the performance of the Services (as the case may be) and each invoice shall quote the Order number.

6.2 **Payment**

Unless otherwise expressed in the Order or agreed in writing, the Buyer shall pay the Price by way of electronic transfer to the bank account of the Seller within 30 days after the end of the month of receipt by the Buyer of a proper invoice.

6.3 **Set off**

The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.



6.4 **Instalments ***

In the case of Goods or Services delivered or provided in instalments, each instalment shall be invoiced separately and the period agreed for payment shall begin to run from the date on which each instalment of Goods is delivered or upon the date on which each instalment of the Services is provided to the Buyer.

7. **DELIVERY**

7.1 **Date of delivery**

The Goods shall be delivered to, and the Services shall be performed at, the address shown for delivery in the Order on the date or within the period stated in the Order.

7.2 **Packing note**

A packing note quoting the number of the Order must accompany each delivery or consignment of Goods and must be displayed prominently.

7.3 **Rejection or acceptance of Goods or Services**

The Buyer shall be entitled to reject any Goods delivered and/or Services provided which are not in accordance with the Order, and shall not be deemed to have accepted any Goods and/or Services until the Buyer has had a reasonable time to inspect the Goods and/or Services following delivery or provision (as the case may be) or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

7.4 **Buyer's redress ***

If the Goods are not delivered on the due date or Services are not provided within the time specified in the Order or (if none) within a reasonable time from the date of the acceptance of the Order then, without prejudice to any other remedy, the Buyer shall be entitled to:

- (a) deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damage for delay, 1% per cent. of the Price for every week's delay, up to a maximum of 5% per cent.; or
- (b) cancel this Order without redress subject to Condition 7.3.

7.5 **Notice of delivery date ***

Where the date of delivery of the Goods or the performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.

7.6 **Return of packaging or packing materials ***

The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.

8. **RISK AND PROPERTY**

8.1 **Risk**

Risk of damage to or loss of the Goods shall pass to the Buyer upon actual delivery and unloading of the Goods to the Buyer in accordance with the Order.

8.2 **Title**

The title in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Order.

9. **COMMITMENTS AND LIABILITY**

9.1 **Seller's commitments as to Goods**

The Seller commits to the Buyer that the Goods:

- (a) shall be of satisfactory quality and fit for the purpose for which goods of that kind are commonly supplied;
- (b) shall be of satisfactory appearance and finish;



- (c) shall be free from minor defects;
- (d) shall be safe and durable;
- (e) shall correspond with any relevant Specification or sample; and
- (f) shall comply with and shall continue to comply with provisions and requirements applicable to the sale of the Goods and where appropriate to the design, manufacture, packaging, packing, delivery, supply and use of the Goods (whether expressly or by implication) of any legislative order, directive or regulation or relevant industry standard in force at the time of delivery of the Goods.

9.2 **Packing**

The Seller commits that the Goods shall be securely packed. The Seller shall be liable for any damage to Goods caused or contributed to by faulty packing.

9.3 **Buyer's remedies**

Without prejudice to any other remedy, if any Goods or Services are not supplied in accordance with the Order and/or Specification, then the Buyer shall be entitled:

- (a) to require the Seller to supply replacement Goods or Services in accordance with the Order and/or Specification within seven days; or
- (b) at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to supply any replacement Goods or Services, to treat the Order as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

9.4 **Seller's commitments as to Services ***

The Seller commits to the Buyer that the Services will be performed by appropriately qualified and trained personnel with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances. The Seller further commits that the Services comply with and shall continue to comply with provisions and requirements applicable to the supply of the Services (whether expressly or by implication) of any legislative order, directive or regulation or relevant industry standard in force at the time of provision of the Services.

9.5 **Indemnity ***

The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expense (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

- (a) breach by the Seller of any of the commitments set out in Condition 9 and/or these Conditions;
- (b) the Seller being unable to deliver the Goods as a result of the imposition of export licence requirements or the cancellation of any import licence;
- (c) any claim that the Goods or Services infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property right or right of a similar nature, of any other party except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
- (d) any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and (where appropriate) installing the Goods;
- (e) any act or omission of any of the Seller's personnel in connection with the performance of the Services; and/or
- (f) any injury to any person or damage to any property caused directly or indirectly by the Goods as a result of an inherent vice or by reason of faulty design materials or workmanship or as a result of any breach by the Seller of any statutory duty laid upon the manufacturers or suppliers of any article for use at work or if the Seller or any agent or servant of the Seller causes or suffers any injury or damage on the premises of the Buyer in performance of the Order or any other loss or delay, direct or indirect, whether arising out of contract or negligence caused by the Seller.

9.6 **Force majeure ***

Subject to the provisions of this Condition 9, and provided each party has complied with the provisions of Condition 9.7, neither the Seller nor the Buyer shall be liable to the other or be deemed to be in



breach of the Conditions by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure arose from or was attributable to acts, events, omissions, or accidents beyond that party's control, ("Force Majeure Event") including without limitation acts of God, fire, flood, earthquake, storm, epidemic, war or national emergency, acts of terrorism, civil disturbance, explosion, inability to procure or delay in procuring equipment and materials, strike, lock-out or labour dispute.

9.7 Action on occurrence of Force Majeure Event *

Any party subject to a Force Majeure Event shall not be in breach of these Conditions provided that:

- (a) it promptly notifies the other party at the email address specified in the Order of the nature and extent of the Force Majeure Event;
- (b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
- (c) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under these Conditions and the Order in any way that is reasonable practicable.

9.8 Buyer's remedies *

Failure on the Seller's part to perform any part of the Order by reason of any event or cause specified or envisaged under Condition 9.6 shall allow the Buyer complete discretion to suspend or cancel the Order without any liability to the Seller for payment.

9.9 Defects in Goods *

If within 12 months after the Goods have been put into use any defect in the Goods shall be discovered or arise under normal use attributable in the Buyer's reasonable opinion to faulty design, materials or workmanship or latent defect caused by damage in transit:

- (a) the Seller shall remedy the defect at the Buyer's option either by replacement or repair at the Seller's own expense;
- (b) the Seller shall not be entitled to reject any claim arising within the period on the basis that notice under this Condition was given outside the specified period; and
- (c) the provisions of these Conditions shall apply to any Goods so replaced or repaired and shall be effective from the date of such repair or replacement.

10. SELLER'S COMMITMENTS

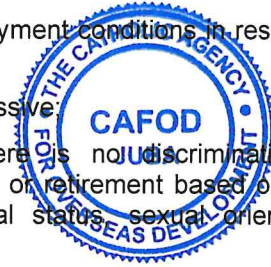
10.1 Labour standards

The Seller commits to the Buyer that the Seller operates its business in accordance with the ethical trading conventions of the International Labour Organisation and, in particular, the Seller commits that:

- (a) employment is freely chosen, and that there is no forced, bonded or involuntary prison labour. Workers are not required to lodge "deposits" or identity papers with the employer and are free to leave employment after reasonable notice;
- (b) workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively;
- (c) working conditions are safe and hygienic, and access will be provided to clean toilet facilities and potable water;
- (d) they will not engage in any practice that is inconsistent with the International Labour Organisation (ILO) Convention on the Rights of the Child;
- (e) the minimum admission for employment or work shall not be less than the age of completion of compulsory schooling;
- (f) all young workers will be protected from performing any work that is likely to be hazardous, or to interfere with the child's education, or that may be harmful to the child's health, physical, mental, social, spiritual or moral development;
- (g) wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmarks, whichever is higher. All workers shall be provided with

written and understandable information about their employment conditions in respect to wages before they enter employment;

- (h) working hours comply with national laws and are not excessive;
- (i) no discrimination is practised and, in particular, there is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation;
- (j) regular employment is provided and the work performed is on the basis of a recognised employment relationship established through national law and practice. Obligations to employees under labour or social security laws are not avoided through the use of labour-only contracting, sub-contracting or home-working arrangements;
- (k) no harsh or inhumane treatment is allowed and physical abuse, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation are prohibited.



10.2 Environmental standards *

The Seller commits that it operates an efficient system of waste management under which waste is minimised, items are recycled whenever practicable, and effective controls of waste in respect of ground, air and water pollution are adopted. In addition, the Seller commits that unnecessary use of materials is avoided, and recycled materials are used whenever appropriate.

11. TERMINATION

11.1 Termination of Orders

The Buyer shall be entitled to cancel the Order in respect of all or part only of the Goods and/or Services by giving notice to the Seller at any time prior to delivery or performance (as the case may be), in which event the Buyer's sole liability shall not exceed the Price less the Seller's net saving of cost arising from cancellation. In addition, the Buyer shall be entitled to terminate the Order without liability to the Seller by giving notice to the Seller at any time if:

- (a) the Seller makes default in or commits a breach of the Order or of any of its obligations hereunder, or if the Goods are, or prove to be, defective, do not comply with the Order, or any Conditions thereof, are broken or not completed by the Seller, or it is clear the Seller will be unable to complete part or the whole of the Order;
- (b) the Seller makes any voluntary arrangement with its creditors or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of solvent amalgamation or reconstruction);
- (c) a receiver, administrative receiver or other similar officer is appointed, over any of the property or assets of the Seller;
- (d) the Seller ceases, or threatens to cease, to carry on business;
- (e) the Seller is subject to any other similar event or proceedings as set out in this Condition 11;
- (f) any of the Seller's commitments set out in Condition 10 are or become false;
- (g) the Seller subcontracts the Order without the prior written consent of the Buyer;
- (h) the Seller is or becomes engaged in fraud, corruption or the support of terrorism;
- (i) the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

11.2 Return of Goods

Where the Buyer is entitled to terminate under this Condition, and the Goods have been delivered, the Buyer shall have the right to return the Goods at the Seller's risk and expense.

12. CONFIDENTIALITY AND ANNOUNCEMENTS

12.1 Confidentiality *

Subject to Condition 12.2, both parties shall treat as strictly confidential:

- (a) the existence, provisions or subject matter of the Order, and any Specification(s);

- (b) the negotiations relating to the Order;
 - (c) all information received or obtained as a result of entering into or performing the Order which relates to the other party; and
 - (d) the other party's know-how.
- together "**Confidential Information**".



12.2 **Exceptions ***

Either of the parties may disclose (including by way of press or public announcement or the issue of a circular) any Confidential Information if and to the extent the disclosure is:

- (a) approved by the other party in writing in advance;
- (b) required by the law of any relevant jurisdiction or by a court of competent jurisdiction;
- (c) lawfully required by any securities exchange or regulatory or governmental body to which either party is subject or reasonably submits, wherever situated;
- (d) disclosed to the professional advisers, auditors or bankers of the Seller or any other member of the Seller's group, or the Buyer or any other member of the Buyers' group subject to the condition that the party making the disclosure shall procure that those persons comply with Condition 12.1 as if they were parties to the Order;
- (e) disclosed to the officers or employees of the Seller or any other member of the Seller's group or any other member of the Buyer's group (in the case of the Buyer) who need to know the information for the purposes of the transactions effected or contemplated by the Order subject to the condition that the party making the disclosure shall procure that those persons comply with Condition 12.1 as if they were parties to the Order;
- (f) of information that has already come into the public domain through no fault of that party; or
- (g) of information of the kind referred to in Condition 12.2(c) which is already lawfully in the possession of that party as evidenced by its or its professional advisers' written records and which was not acquired directly or indirectly from the other party to whom it relates,

provided that any information disclosed pursuant to paragraphs (b) or (c) shall be disclosed only after notice to the other party (except where that notice is prohibited by law) and the disclosing party shall take reasonable steps to co-operate with the other party regarding the content, timing and manner of that disclosure or any action which any of them may reasonably elect to take to challenge legally the validity of that requirement.

13. **ADVERTISING OR PUBLICITY**

Neither the Seller or the Buyer shall make public reference to the existence or terms of these Conditions or the Order, or include the other's name in lists of references without the prior written approval of the other. This prohibition includes use of the other party's name, trademarks, service marks, logos, or any other reference to such other party, directly or indirectly, in any advertising, sales presentation, news release, release to any professional or trade publications, promotional materials, or packaging or for any other purpose. Either party may, however, include the other party's name in internal business planning documents and whenever required by legal, tax, accounting, securities exchange, or regulatory requirements.

14. **DATA PROTECTION**

14.1 **Compliance with legislation**

The Seller shall comply with the provisions and obligations imposed on it by any applicable data protection legislation.

14.2 **Return of Personal Data ***

All information relating to an identifiable individual or legal person, (for the purposes of this Condition 14, "**Personal Data**"), acquired by the Seller from the Buyer shall be returned or deleted (at the option of the Buyer) on request.



15. DISPUTES

15.1 How disputes will be handled

Any dispute from time to time shall be treated in accordance with the provisions of this Condition 15.

15.2 Authorised Representatives to attempt to resolve Disputes

The Authorised Representatives are and will remain authorised to settle a dispute on behalf of the party they represent. Upon a dispute arising, the Authorised Representatives shall, as soon as reasonably practicable and in any event no later than 7 days after a written request from either party to the other, meet in good faith and use all reasonable endeavours to resolve the dispute.

15.3 Authorised Representatives not available

If an Authorised Representative is unable to attend a meeting held pursuant to Condition 15, the party they represent may nominate a substitute to attend provided the substitute has at least the same level of seniority or managerial or directorial responsibility as the person they are replacing and is authorised to settle the relevant dispute on behalf of the party they represent.

15.4 Compromise agreement after resolution by Authorised Representatives

If the Authorised Representatives reach agreement on the resolution of the relevant dispute, the parties will each procure that the agreement is reduced to writing and signed by their respective duly authorised representative at which time it shall be and remain binding on the parties.

15.5 Initiation of court Proceedings

Neither party may initiate any court proceedings until the provisions of Condition 15 have been complied with and the parties have failed to reach agreement provided that a period of at least 14 days has elapsed since the relevant meeting of Authorised Representatives.

15.6 Injunctive relief

Nothing in this Condition 15 shall prevent any party from seeking injunctive or other emergency relief against the other at any time.

16. GENERAL

16.1 Subcontracting

The Seller may not subcontract the Order without the prior written consent of the Buyer, not to be unreasonably withheld, provided that the Seller guarantees the performance of the obligations of the subcontractor.

16.2 Entire agreement

These Conditions and the Order represent the whole and only agreement between the parties in relation to the subject matter of the Order and Conditions and supersede any previous agreement whether written or oral between all or any of the parties in relation to that subject matter.

16.3 Notices

Any notice required or permitted to be given by either party to the other under these Conditions or under the Order shall be given by email addressed to the other party at the email address specified in the Order.

16.4 Manuals *

The Seller shall supply to the Buyer not later than the date of delivery or where applicable the date of installation of the Goods, adequate information about the use for which the Goods have been designed, any operating and instruction manuals, lists of recommended spare parts, and any other requisite information to ensure that the Goods will be safe and without health risks when put to use.

16.5 No assignment *

The Order is personal to the Seller and the Seller shall not assign or purport to assign to any other person any of its rights or obligations under the Order.

16.6 Waivers *

No waiver by the Buyer of any breach of this Order by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

16.7 **Invalidity ***

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

16.8 **Governing law**

These Conditions shall be governed by the laws of the country to which the Goods are to be delivered and/or the Services are to be provided, as set out in the Order, to whose non-exclusive jurisdiction the parties agree to submit.

