

# Sovereign Housing Association

## Purchase Order – Standard Terms and Conditions

**1. Format.** These Standard Terms and Conditions are incorporated into and form part of the Purchase Order. The Purchase Order is comprised of these Standard Terms and Conditions together with the front-end page(s) generated by Sovereign Housing Association's (SHA) purchase to pay computer program application including any other documents or components referenced in the front-end page(s) as being part of the Purchase Order, and any change orders, addenda, revisions, amendments and supplementary agreements issued by SHA from time to time pertaining thereto (as approved by the "Supplier" or "Vendor", if such approval is required according to the Purchase Order). The terms "Supplier", "Seller" and "Vendor" are used interchangeably in the Purchase Order - both refer to the entity identified as the "Supplier", "Seller" or the "Vendor" on the front-end page(s).

**2. Subsidiaries.** All references to SHA shall be deemed to include all subsidiaries of SHA.

**3. Agreement.** This Purchase Order ("Order") is Sovereign Housing Association's ("SHA") offer to purchase from Seller the goods and/or services which are described on the face of this Order. By acknowledging receipt of this Order, by delivering goods or by commencement of a service, Seller agrees that SHA's terms and conditions of sale contained in this Order shall govern the contract between SHA and Seller, although Seller's agreement to such terms and conditions is not limited to the foregoing methods. Any terms proposed in Seller's acceptance of this Order which add to, vary from, or conflict with the terms in this Order, are hereby rejected. Any such proposed terms shall be void and the terms in this Order shall constitute the complete and exclusive statement of the terms and conditions of the contract between Seller and SHA. If this Order has been issued by SHA in response to an offer to sell by Seller and if any of the terms herein are additional to or different from any terms of Seller's offer, then the issuance of these terms and conditions by SHA shall constitute a counter offer to Seller's offer subject to Seller assenting to such additional and different terms and acknowledging that this Order constitutes the entire agreement between Seller and SHA. Seller shall be deemed to have assented to these terms and conditions and acknowledged that this Order constitutes the entire agreement between Seller and SHA by delivering goods, by commencement of a service unless Seller notifies SHA to the contrary in writing within five (5) working days of receipt of this Order.

**4. Prices.** The purchase price must not be higher than shown on the face of this Order. Any change to the purchase price or any other term or condition of this Order must be authorised in writing by SHA. All prices are delivered with duty paid to SHA's designated delivery location and shall include all custom duties and sales, use, excise and property taxes and similar charges.

**5. Delivery.** Time is of the essence. If the delivery of goods are not made in the quantities or on the delivery date or dates specified or the rendering of the services are not completed by the date or dates specified, SHA shall have the right, in addition to its other rights and remedies provided by the contract or by law or in equity, to take either or both of the following actions: (i) direct expedited routings of the goods with Seller paying the difference in cost between the expedited routing and the Order routing cost; (ii) cancel this Order by written notice, which shall be effective when received by Seller, and shall apply to goods not yet delivered or services not yet rendered. SHA shall be entitled to purchase substitute goods and/or services elsewhere and charge Seller with any additional costs incurred.

**6. Packaging.** All goods must be packaged in the manner as specified by SHA and delivered in the manner and by the route and carrier designated by SHA. If SHA does not specify the manner in which the goods must be packaged or delivered, Seller shall package the goods so as to avoid any damage in transit and deliver the goods at the lowest possible transportation rates, consistent with Seller's obligation to meet the delivery schedule set forth in this Order.

**7. Risk of Loss.** Title and risk of loss in transit shall not pass to SHA until the goods are delivered to the location designated on the face of this Order and accepted by SHA. If SHA rightfully rejects the goods, receives a non-conforming tender, or revokes its acceptance, risk of loss and title shall be deemed to have remained with Seller.

**8. Inspection.** SHA's payment for the goods shall not constitute its acceptance of the goods. SHA shall have the right, but not the obligation, to

inspect the goods and to reject any of the goods which are in SHA's judgment defective. Goods so rejected and goods supplied in excess of the quantities ordered may be returned to Seller at its own expense. Payment, if any, made for any goods rejected hereunder shall be promptly refunded by Seller. The fact that SHA fails to inspect or test any goods shall not affect any of SHA's rights.

**9. Invoices and Payment.** Invoices shall be deemed valid should they contain the PURCHASE ORDER NUMBER, item number (if relevant), description of goods or services, quantities, unit prices, and total purchase price with all taxes stated separately (Valid Invoice). Payment shall be made net 30 days after receipt of a Valid Invoice and acceptance of goods or services by SHA. All claims for money due or to become due from SHA shall be subject to deduction by SHA for any setoff or counterclaim arising out of this or any other of SHA's Orders with Seller.

**10. Changes.** No modification of this Order shall be effective without SHA's prior written consent. SHA reserves the right to change (i) specifications and drawings where the goods are being specifically manufactured for SHA, (ii) the place of delivery, (iii) the time of delivery, or (iv) the quantity purchased.

**11. Cancellation.** SHA may cancel this Order or any part thereof if Seller breaches any provision of this Order. This Order will terminate automatically, without notice, if Seller becomes insolvent or the subject of any proceeding under the law relating to bankruptcy or the relief of debtors. SHA may also terminate this Order or any part thereof for the sole convenience of SHA.

**12. Warranty.** Seller warrants to SHA that all goods covered by this Order shall conform to the specifications, drawings, samples and/or other descriptions specified by SHA or if none are specified, to Seller's standard specifications for such goods. Seller also warrants to SHA that all goods shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect. SHA's inspection, test, acceptance or use of the goods shall not affect Seller's obligations under these warranties. Seller shall replace or correct, at SHA's option and at Seller's cost, defects of any goods not conforming to these warranties. If Seller fails to correct defects in or replace non-conforming goods within ten (10) working days from the date SHA notifies Seller of the defect or defects, SHA may provide written notice to Seller of a further ten (10) working days to either (i) make such corrections or replace such goods and charge Seller for all costs incurred by SHA, or (ii) revoke its acceptance of the goods in which event Seller shall be obligated to refund the purchase price and make all necessary arrangements, at Seller's costs, for the return of the goods to Seller. All warranties of Seller herein or which are implied by law shall survive any inspection, delivery, acceptance or payment by SHA.

**13. Patent Indemnification.** Seller shall indemnify SHA from any damages, liabilities, claims, losses and expenses (including legal fees) paid or incurred by SHA in connection with any action against SHA for any alleged infringement of patent, invention or copyright rights arising from the sales or use of goods provided. SHA, at its expense, may participate in the defence of any such action, but shall not be obligated to so participate.

**14. Indemnification.** Seller shall indemnify and hold SHA and its affiliates harmless and, upon request, shall defend each of them from and against any or all claims, demands, litigation or proceedings of whatever kind, whether based upon negligence, breach of express or implied warranty, strict liability or any other theory, and from and against all direct, indirect, special, exemplary, incidental or consequential damages of every kind whatsoever, arising out of, by reason of, or in any way connected with the goods and/or services, the design, manner of preparation, manufacture, construction, completion, or delivery or non-delivery of any goods and/or services by Seller, any breach by Seller of any of its obligations hereunder, or any other act, omission or negligence of Seller or any of Seller's employees, workers, servants, agents, subcontractors or suppliers. Seller shall, upon request, pay or reimburse SHA or any other party entitled to indemnification hereunder for all costs and expenses, including legal fees, as incurred by SHA or such other party in connection with any such claim, demand, litigation, proceeding, loss or damage. SHA's aggregate liability arising from or relating to this order is limited to the amount paid by SHA for the goods and/or services to the maximum extent allowable under applicable law. SHA shall not be liable under this order for any special, incidental, consequential, indirect or punitive damages including, without

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limitation, lost profits or revenues even if SHA has been advised of the possibility of such damages.

**15. Confidentiality.** All specifications, documents and prototype goods delivered by SHA to Seller are the property of SHA. They are delivered solely for the purpose of Seller's performance of this Order and on the express condition that the information contained therein shall not be disclosed to others nor used for any purpose other than in connection with this Order except with SHA's prior written consent. If SHA gives written consent, Seller will strictly comply with the terms and conditions of any consent and, even after such consent, will not use SHA's name or any of its trademarks, service marks, trade names, or logos except with the express prior written consent of SHA to the specific use. Seller shall promptly return to SHA all such specifications, documents and prototype goods upon SHA's written request. Seller's obligations under this Paragraph shall survive the cancellation, termination or completion of this Order.

**16. Force Majeure.** SHA may delay delivery and/or acceptance occasioned by causes beyond its control.

**17. Remedies.** Each of the rights and remedies reserved to SHA in this Order and subsequent contract shall be cumulative and additional to any other remedies provided in law or equity. No delay or failure by SHA in the exercise of any right or remedy shall affect any such right or remedy and no action taken or omitted by SHA shall be deemed to be a waiver of any such right or remedy.

**18. Compliance with Laws.** Seller warrants to SHA that all goods supplied hereunder will have been produced in compliance with all applicable national, international, foreign and local laws, statutes, regulations, orders, rules and treaties. Seller warrants to SHA that Seller is an affirmative action/equal opportunity employer, and Seller hereby certifies that it is in compliance with all applicable national, international, foreign and local employment laws, statutes, regulations, orders, rules and treaties. Seller shall be required to obtain and pay for any licence, permit, inspection or listing by any public body or certification organisation required in connection with the manufacture, performance, completion or delivery of any good and/or service.

**19. Notices.** All notices, consents, waivers and other communications required or permitted to be given pursuant to this Order, shall be in writing and shall be deemed to have been delivered either (i) on the delivery date (if personally delivered), or if delivered by confirmed facsimile or e-mail, (ii) one (1) business day after delivery to any national overnight courier directing delivery on the next business day with receipt requested, or (iii) three (3) business days after deposit with a registered postal services company with return receipt requested, with adequate postage paid. All notices to SHA shall be sent to Sovereign Housing Association Ltd, Woodlands, 90 Bartholomew Street, Newbury, Berkshire RG14 5EE for the attention of the Procurement Department and to Seller at its address as set forth in this Order, or at such other address as either party may designate in writing to the other party.

**20. Severability.** If any provision of this Order shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, this provision shall not affect any other provision or provisions contained in this Order.

**21. Paragraph Titles.** The paragraph titles are solely for convenience of reference and shall not affect the meaning or construction of any provision of this Order.

**22. Applicable Law.** The construction, validity and performance of this Order shall be governed in all respects by English Law.

**23. Dispute Resolution.** All causes of action arising hereunder or related in any way hereto shall be brought only in the English courts and Seller hereby submits to the jurisdiction of such courts and waives any claim that such courts are an inconvenient forum. An action by Seller arising out of or related to this Order shall be commenced within one (1) year from the date the right, claim, demand or cause of action shall first occur. SHA reserves the right to object to any proceedings issued against it, which are deemed to be non-compliant with the provisions of this clause.

**24. Survival.** In addition to those terms that survive the expiration or termination of this Order by their express terms, the provisions of Sections 11, 12, 13, 14, 18, 23 and 25 shall survive the expiration or termination of this Order for any reason.

Seller acknowledges that any breach of the terms, conditions, or covenants set forth in Sections 14 or 18 may cause irreparable damage to SHA and that a recovery of damages at law would not be an adequate remedy. Accordingly, in the event that Seller breaches the terms, covenants or conditions of Sections 14 or 18, Seller hereby consents to a restraining order and/or injunctive relief against Seller, without the posting of a bond, in addition to any other legal or equitable rights or remedies SHA may have.

**25. Insurances.** Seller must ensure that they take out and maintain the relevant insurance policies which are deemed reasonable to indemnify the goods and/or services as described in this Order.

**26. Relationship.** Nothing in this agreement constitutes a relationship of partnership or of employer and employee between the parties and the parties expressly deny any such relationship.

**27. Intellectual Property.** Nothing in this agreement alters Seller's ownership of any intellectual property it owned prior to this agreement. SHA shall own all materials delivered ("the Materials") and all intellectual property created by Seller in performing its obligations under this Order. Seller agrees to supply SHA with the Materials on termination of this agreement.

**28. Publicity.** Neither party shall without the written consent of the other (the giving of which consent shall be at the sole discretion of that party) advertise, publicly announce or provide to any other person information relating to the existence or details of the Contract or use the other party's name in any format for any promotion, publicity, marketing or advertising purpose.

**29. Assignment and Sub-Contracting.** Subject always to paragraph 32, neither party shall assign the Order or any of its rights or obligations there under without first having received the written approval of the other party. Supplier shall not sub-Contract the Order or any part thereof without having first obtained the written permission of SHA provided that this restriction shall not apply to sub-Contracts for materials or minor details or any part of the work to be performed or materials or equipment to be supplied for which the sub- Contractor is named in the Order. Supplier shall be responsible for the acts, defaults and omissions of its sub-Contractors, whether approval has been given to their appointment under this Clause or not, as if they were his own and any consent given under this Clause shall not relieve Supplier of any of his obligations under the Order.

**30. Environment.** Supplier warrants that price for alternative products, where such products exist, which are free from harmful toxins, chemicals or gases, or which are manufactured from recycled material, and which are in any case proven to be less detrimental to the environment. Supplier agrees to provide goods/services which accord with SHA's policy on the environment. Supplier shall, when working at SHA's premises, perform the Order in accordance with the SHA's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

**31. Conflicts of Interest, fraud and Competition Law.** Supplier shall take all appropriate steps to ensure that neither it nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or such persons and the duties owed to the SHA under the provisions of the Order. Supplier shall disclose to SHA full particulars of any such conflict of interest which may arise. Supplier shall safeguard the SHA's funding of the Order against fraud generally and in particular, fraud on the part of the staff, or the Suppliers' directors. Supplier shall have procedures in place relating to the prevention of fraud, which includes the facilitation of tax evasion. Supplier shall notify SHA immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur. Supplier warrants that it has engaged in no price fixing, bid rigging, illegal price information exchange agreement or other arrangement in breach of UK, EU or other competition laws relevant to the Order or arrangements between the parties.

**32. Data Protection.** In this clause, defined terms have the meaning given to them in the Data Protection Act 1998 ("DPA"), and from 25 May 2018 the General Data Protection Regulation (EU) 2016/679 (the "GDPR") or such other domestic legislation that supplements and / or implements the GDPR, along with any associated guidance and Codes of Practice ("the Data Protection Legislation"). SHA is the "Data Controller" and Seller is the "Data Processor". To the extent Seller processes Personal Data of SHA, Seller warrants and undertakes to: (i) comply at all times with the provisions and obligations imposed by the Data Protection Legislation, including obtaining any and all necessary registrations, notifications and consents required under the Data Protection Legislation for the purposes of this

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Order; (ii) process Personal Data only in accordance with the instructions of SHA for the purpose of this Order, unless required otherwise by law in which case the Supplier shall inform SHA of that legal obligation in advance, unless the law prohibits that on important grounds of public interest (iii) implement and maintain appropriate technical and organisational measures to protect any Personal Data from unauthorised or unlawful processing, against a Personal Data Breach and to assist SHA in complying with its obligations under the Data Protection Legislation, including any rights exercised by individuals in relation to their Personal Data (iv) not engage another Data Processor without prior written authorisation from SHA and ensuring compliance with any conditions attached to that consent (v) ensure the reliability of any employees agents or offices reasonably requiring access to the Personal Data for the purposes of this Order, ensuring they are under an obligation of confidentiality, having undertaken training in Data Protection Legislation and having an understanding of the Supplier and SHA's obligations in relation to the Personal Data (vi) not transfer the Personal Data outside of the European Economic Area without the prior written consent of SHA, complying with any conditions attached to that consent; and (vii) upon termination of expiry of the Order either return to SHA or destroy the Personal Data (including copies) in the Supplier's possession. The Seller shall assist SHA, as may be reasonably required by SHA, in complying with its obligations under the Data Protection Legislation including in relation to any other complaint or request relating to SHA's obligations under the Data Protection Legislation. The Supplier is required to notify SHA on the receipt of a Data Subject Access Request or Complaint regarding the Personal Data promptly. SHA shall be entitled on giving reasonable notice to the Supplier to request that the Supplier provide evidence and / or SHA audit the procedures of the Supplier for the purposes of ensuring compliance with these terms and to take any reasonable steps to satisfy itself that the Supplier is so complying. The Supplier warrants and undertakes that in the event that it becomes aware of any unlawful processing or Personal Data Breach in relation to the Personal Data, it shall: (i) record the details of the suspected incident in a security incident log and immediately undertake an initial investigation into the suspected incident; (ii) promptly and no later than 24 hours of becoming aware of the event, give written notice of the same to SHA; (iii) take no further steps in relation to the breach until such time that it has SHA's written instructions to do so; (iv) co-operate fully with SHA in the course of any investigation undertaken by SHA, any corrective actions arising from that investigation, including any report to and investigation by the Information Commissioner's Office and / or notification to the affected individuals; and (v) implement any measure necessary to restore the security and integrity of any compromised Personal Data.