

## Bupa Group Purchasing Terms of Trading

***Important notice: These terms are intended to apply to any trading between you and Bupa in the absence of any negotiated contract between us. Your standard terms of sale shall NOT apply. If you have a negotiated contract with Bupa, these terms shall NOT apply and your negotiated contract will apply.***

### **1. DEFINITIONS & INTERPRETATION**

**1.1** The following definitions and rules of interpretation apply in these conditions.

"Bupa": The British United Provident Association Limited

"Contract": the Order and the Seller's acceptance of the Order.

"Goods": any goods agreed in the Contract to be bought by Bupa from the Seller (including any part or parts of them).

"Order": Bupa's written instruction to buy the Goods or Services, incorporating these conditions.

"Seller": the person, firm or company who accepts Bupa's Order.

"Services": any services agreed in the Contract to be provided to Bupa by the Seller.

**1.2** A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

**1.3** A reference to one gender includes a reference to the other gender.

**1.4** Condition headings do not affect the interpretation of these conditions.

### **2. APPLICATION OF TERMS**

**2.1** Subject to any variation under condition 2.4, these conditions are the only conditions upon which Bupa is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.

**2.2** Each Order for Goods / Services by Bupa from the Seller shall be deemed to be an offer by Bupa to buy Goods / Services subject to these conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

**2.3** No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

**2.4** These conditions apply to all Bupa's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by an authorised Bupa representative.

### **3. PROVISION OF ANY SERVICES**

**3.1** Where any Services are to be provided, the Seller shall provide the Services to any specified service levels, locations, times and other conditions set out in the relevant Order. Where any such targets are not met the Seller shall pay the relevant service credits as referred to in the relevant Order. The payment of such service credits is in addition to any other rights and remedies Bupa may have pursuant to this Agreement or at law and shall not be Bupa's sole and exclusive remedy in relation to the breach. The Seller acknowledges that the service credits are in the nature of an adjustment of the relevant monies being a reduced payment for a reduced service and are not a payment of damages. Consequently the Seller agrees that in the event that Bupa or any member of the Bupa Group suffers any loss in excess of the value of any relevant Service Credit, Bupa shall be able to recover such loss from the Seller.

**3.2** The Seller shall carry out the Services strictly in accordance with the Contract using appropriately qualified and trained personnel and all due skill, care and diligence to best industry practice and to such high standard of quality as it is reasonable for Bupa to expect in all the circumstances. Time of performance of the Services is of the essence in the Contract. The Seller represents and warrants that the Services shall comply with all applicable laws, regulations, directives and all British and European standards which relate to the Services.

**3.3** In the event that any such persons are deemed to be any employees of Bupa or any member of the Bupa Group by operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or otherwise at any time during or after the subsistence of this Contract, the Seller shall indemnify Bupa and each member of the Bupa Group in relation to all liabilities, losses, actions, proceedings, damages, costs, claims, demands and expenses brought or made against or suffered or incurred by Bupa or any member of the Bupa Group, including any claim to tax, arising therefrom.

## **4. QUALITY AND DEFECTS**

**4.1** The Goods / Services shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by Bupa to the Seller.

**4.2** Bupa's rights under these conditions are in addition to the statutory conditions implied in favour of Bupa by the Sale of Goods Act 1979 and the Sale of Goods and Services Act 1982.

**4.3** At any time prior to delivery of the Goods to Bupa, Bupa shall have the right to inspect and test the Goods at all times.

**4.4** If the results of such inspection or testing cause Bupa to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by Bupa to the Seller, Bupa shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition Bupa shall have the right to require and witness further testing and inspection.

**4.5** Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

**4.6** If any of the Goods fail to comply with the provisions set out in condition 4 Bupa shall be entitled to avail itself of any one or more remedies listed in condition 13.

## **5. INDEMNITY**

The Seller shall keep Bupa indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by Bupa as a result of or in connection with:

(a) defective workmanship, quality or materials;

(b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods and/or the provision of the Services; and

(c) any claim made against Bupa in respect of any liability, loss, damage, injury, cost or expense sustained by Bupa's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods / Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

## **6. DELIVERY OF THE GOODS**

**6.1** The Goods shall be delivered, carriage paid, to Bupa's place of business or to such other place of delivery as is agreed by Bupa in writing prior to delivery of the Goods. The Seller shall off-load the Goods at its own risk as directed by Bupa.

**6.2** The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place as soon as reasonably possible and in any event within 28 days of the Order provided that the Seller shall also notify Bupa of such delivery date as soon as reasonably possible.

**6.3** The Seller shall invoice Bupa upon, but separately from, despatch of the Goods to Bupa.

**6.4** The Seller shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

**6.5** Time for delivery shall be of the essence.

**6.6** Unless otherwise stipulated by Bupa in the Order, deliveries shall only be accepted by Bupa in normal business hours.

**6.7** If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, Bupa reserves the right to:

(a) cancel the Contract in whole or in part;

(b) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;

(c) recover from the Seller any expenditure reasonably incurred by Bupa in obtaining the Goods in substitution from another supplier; and

(d) claim damages for any additional costs, loss or expenses incurred by Bupa which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

**6.8** If the Seller requires Bupa to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to Bupa and any such packaging material shall only be returned to the Seller at the cost of the Seller.

**6.9** Where Bupa agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle Bupa at its option to treat the whole Contract as repudiated.

**6.10** If the Goods are delivered to Bupa in excess of the quantities ordered Bupa shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.

**6.11** Bupa shall not be deemed to have accepted the Goods until it has had 30 days to inspect them following delivery. Bupa shall also have the right to reject the Goods as though they had not been accepted for 30 days after any latent defect in the Goods has become apparent.

**6.12** Where the Seller or any of its employees, agents or subcontractors are onsite at any Bupa premises they shall obtain a copy of and abide by all rules for working or visiting such premises.

## **7. RISK/PROPERTY IN THE GOODS**

The Goods shall remain at the risk of the Seller until delivery to Bupa is complete (including off-loading and stacking) when ownership of the Goods shall pass to Bupa.

## **8. PRICE**

**8.1** The price of the Goods / Services shall be stated in the Order and unless otherwise agreed in writing by Bupa shall be exclusive of value added tax but inclusive of all other charges.

**8.2** No variation in the price nor extra charges shall be accepted by Bupa.

## **9. PAYMENT**

**9.1** Bupa shall pay the price of the Goods / Services within 45 days from the end of the month following delivery of the Goods and/or provision of the Services to Bupa provided that Bupa has received from the Seller a valid invoice which matches the relevant purchase order. Time for payment shall not be of the essence of the Contract.

**9.2** Without prejudice to any other right or remedy, Bupa reserves the right to set off any amount owing at any time from the Seller to Bupa against any amount payable by Bupa to the Seller under the Contract.

**9.3** If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 3% per annum over Northern Rock's base rate from time to time. The Seller is not entitled to suspend supply of the Goods / Services as a result of any sums being outstanding.

## **10. CONFIDENTIALITY**

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by Bupa or its agents and any other confidential information concerning Bupa's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to Bupa and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

## **11. BUPA'S PROPERTY**

Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by Bupa to the Seller or not so supplied but used by the Seller specifically in the supply of the Goods / Services shall at all times be and remain the exclusive property of Bupa but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to Bupa and shall not be disposed of other than in accordance with Bupa's written instructions, nor shall such items be used otherwise than as authorised by Bupa in writing.

## **12. TERMINATION**

**12.1** Bupa shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller 1 week's written notice whereupon all work on the Contract shall be discontinued unless Bupa notifies the Seller that it requires a further continued provision of the Goods / Services for a period of 1 month to allow it to transition to a replacement supplier.

**12.2** Bupa shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

(a) the Seller commits a material breach of any of the terms and conditions of the Contract; or  
(b) any distress, execution or other process is levied upon any of the assets of the Seller; or  
(c) the Seller 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 Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of 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 Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller; or  
(d) the Seller ceases or threatens to cease to carry on its business; or  
(e) the financial position of the Seller deteriorates to such an extent that in the opinion of Bupa the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

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

### **13. REMEDIES**

Without prejudice to any other right or remedy which Bupa may have, if any Goods / Services are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract Bupa shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods / Services have been accepted by Bupa:

- (a) to rescind the Order;
- (b) to reject the Goods / Services (in whole or in part) and return them (in the case of Goods) to the Seller at the risk and cost of the Seller on the basis that a full refund for the relevant Goods / Services shall be paid forthwith by the Seller;
- (c) at Bupa's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods / Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) to refuse to accept any further deliveries of the Goods / Services but without any liability to the Seller;
- (e) to carry out at the Seller's expense any work necessary to make the Goods / Services comply with the Contract; and
- (f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

### **14. ASSIGNMENT & NOVATION**

**14.1** The Seller shall not be entitled to assign or novate the Contract or any part of it without the prior written consent of Bupa.

**14.2** Bupa may assign the Contract or any part of it to any person, firm or company.

### **15. GENERAL**

**15.1** Each right or remedy of Bupa under the Contract is without prejudice to any other right or remedy of Bupa whether under the Contract or not.

**15.2** If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

**15.3** Failure or delay by Bupa in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

**15.4** Any waiver by Bupa of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

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

**15.6** The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

