



## Purchase Order Terms & Conditions

### 1. Interpretation

**"Deliverables"** means the materials, media, goods, software and any work product of the Services"

**"Goods"** means the goods specified in the PO;

**"Intellectual Property"** means any and all trade marks, patents, registered designs, copyright, design rights (including those existing in spread sheets), know-how, inventions, confidential information, database rights and moral rights whether or not registered or unregistered and including any applications and the right to apply for the registration of any such rights and any similar rights anywhere in the world, whether existing at the date of the Order or created thereafter;

**"Order"** means the PO, Specification, these terms and any documentation identified in one of the above as forming part of the Order;

**"PO"** means the purchase order issued by Sunfixings;

**"Price"** means the price specified in the PO;

**"Services"** means the services to be provided by the Supplier as specified in the PO;

**"Specifications"** means the specification or scope specified or referred to in the PO and includes all drawings, documents and standards referred to therein;

**"Sunfixings"** means Sunfixings Limited, a company incorporated in England with company number 7486341 whose registered office is at R3 Bourton Industrial Park, Bourton on the Water, Cheltenham, Gloucestershire GL54 2HQ;

**"Sunfixings' Policies"** means Sunfixings' business principles and policies, which are available on Sunfixings' website ([www.sunfixings.co.uk](http://www.sunfixings.co.uk)) or otherwise on request;

**"Supplier"** means the entity or person identified as the Supplier on the PO;

**"Trade Marks"** means all trade marks, service marks, trade and business names used by Sunfixings and/or in connection with Sunfixings' business, internet domain names, logotypes and designs and the goodwill associated with each or any of them, belonging to and/or used by the Sunfixings whether registered or unregistered and includes those being designed or considered for use from time to time and applications for registration of any of the above;

**"VAT"** means Value Added Tax or any similar sales tax in any relevant jurisdiction.

### 2. Status of Order

- 2.1 The PO is an offer by Sunfixings for the purchase of the Goods and/or Services exclusively upon the terms of this Order. These terms shall apply to the PO and all orders made by Sunfixings to the exclusion of all other terms and conditions referred to by the Supplier (whether in a quotation, acceptance, correspondence or otherwise) or upon which the Supplier accepts or purports to accept the Order.
- 2.2 The Supplier shall be deemed to have accepted this Order i) upon any written acceptance or signature of the PO; ii) upon any performance of the PO; or iii) after the expiry of ten days after the issue of this Order.
- 2.3 Sunfixings may request a change to the PO at any time upon written notice to the Supplier ("Change Notice"). Upon issue of the Change Notice the Supplier shall use its best endeavours to comply with the Change Notice and shall only reject the Change Notice if the requested change would result in the Supplier incurring material additional costs, in which event the Supplier shall notify Sunfixings within two (2) Business Days of the issue of the Change Notice giving details of the additional costs and including details of any additional reasonable costs which would be incurred in order to satisfy the Change Notice ("The Change Response"). Sunfixings shall (in its sole discretion) accept or decline the Change Response. For the avoidance of doubt, the terms and conditions herein shall apply exclusively to any Change Notice, Change Response and/or variation of any PO or Order. If no Change Response is received by Sunfixings within 2 days of the issue of a Change Notice the Supplier will be deemed to have accepted the Change Notice.

### 3. Performance

- 3.1 The Supplier shall supply the Goods and/or Deliverables and/or perform the Services in accordance with the Order.
- 3.2 The Goods, Deliverables and/or Services shall conform with the Specification, be of the best quality and workmanship, be without defect or latent defect and shall comply with all relevant national and international quality assurance standards.
- 3.3 The Supplier shall use all reasonable skill and care in the performance of the Services and/or provision of the Goods and/or Deliverables and shall ensure that the Goods and/or Deliverables are created and consist of high quality materials and are manufactured to a high standard.
- 3.4 The Supplier shall comply with all reasonable instructions of Sunfixings.
- 3.5 The Supplier shall provide at the time of delivery or performance (as appropriate) all appropriate information, warnings, instructions and documentation in relation to the safe and proper use of the Good, Deliverables and/or Services.
- 3.6 Unless otherwise stated in the PO the lead time between issue of the PO and delivery of the Goods and/or Deliverables shall be a maximum period of twenty-one (21) days from the date of the PO.

- 3.7 Unless otherwise stated in the PO, the Supplier shall at all times for a period of six (6) months from the date of the PO maintain sufficient stock of the Goods and/or Deliverables so as to fulfill further orders for the Goods and/or Deliverables from Sunfixings for a similar quantity of Goods and/or Deliverables. For the avoidance of doubt, Sunfixings is not under any obligation to issue further orders.

### 4. Delivery

- 4.1 The Supplier shall deliver the Goods and/or Deliverables and otherwise perform the Services on the dates and to/at the location specified in the PO, and such delivery and/or performance shall be in accordance with the terms of this Order and all terms specified in the PO. If no delivery and/or performance date is specified in the PO the Supplier shall perform the Services and/or deliver the Goods and/or Deliverables within a reasonable time of receipt of the Order.
- 4.2 Time is of the essence.
- 4.3 If Supplier fails to deliver the Goods and/or Deliverables in full on the date specified for delivery in the PO and/or to perform the Services in accordance with any dates specified in the PO, Sunfixings may terminate the Order immediately without liability for Sunfixings. The Supplier indemnifies Sunfixings against any and all losses, damages, and reasonable costs and expenses attributable to the Supplier's failure.
- 4.4 All deliveries will be accompanied by a packing note prominently displayed stating the PO number to which the delivery relates, a description of the Goods and/or Deliverables and the number of units of the Goods and/or Deliverables; and the Supplier shall, at its own cost, ensure compliance with, and provide all necessary or desirable documentation relating to, all applicable laws and regulations, including (but not limited to) a Statement of Compliance (CE Statement).
- 4.5 The Goods and/or Deliverables will be securely packaged in such a manner so as to prevent damage. Damaged Goods and/or Deliverables will not be accepted. If requested by Sunfixings the Supplier will collect at its own expense all packaging material.
- 4.6 Delivery will be deemed to have been taken place at the time when delivery of all Goods and/or Deliverables has been accepted by Sunfixings.

### 5. Inspection & Acceptance

- 5.1 Acceptance of Goods and/or Deliverables will take place upon written acceptance signed by Sunfixings or upon the first occasion of Sunfixings use of the Goods and/or Deliverables which ever is the earliest. Acceptance will not limit Sunfixings right to reject as provided in the remainder of this clause 5 and is without prejudice to Sunfixings rights and remedies for defective and/or non-compliant Goods and/or Deliverables.
- 5.2 Sunfixings reserves the right to inspect the Goods and/or Deliverables on or after delivery and Sunfixings, may, at its sole option, reject all or any portion of the Goods and/or Deliverables if it determines the Goods and/or Deliverables are defective or do not otherwise conform with this Order.
- 5.3 In the event that Sunfixings rejects any Goods and/or Deliverables Sunfixings may (i) require the replacement of rejected Goods and/or Deliverables, in which case the Supplier shall promptly replace the nonconforming Goods and/or Deliverables; or (ii) elect to terminate the Order and purchase the Goods and/or Deliverable from a third party, in which case the Supplier shall pay to Sunfixings the costs incurred by Sunfixings in obtaining the Goods and/or Deliverables from a third party. If Sunfixings elects for redelivery and the Supplier fails to deliver Goods and/or Deliverables within the new time period specified by Sunfixings the Order shall be terminated and Sunfixings shall be entitled to obtain the Goods and/or Deliverables from a third party as set out in (ii) above.
- 5.4 Any inspection or action taken in accordance with clause 5.1 to 5.3 (inclusive) above shall be without prejudice of Sunfixings rights and remedies arising under this Order.

### 6. Ownership & Risk

- 6.1 Title to and risk in the Goods and Deliverables shall pass to Sunfixings at the time when the Goods and/or Deliverables are delivered to Sunfixings (save that, if sooner, title shall pass when payment is made by Sunfixings).
- 6.2 The Supplier shall ensure that Sunfixings obtains unencumbered ownership of the Goods and Deliverables. The Supplier waives any and all rights of retention in respect of the Goods and Deliverables.

### 7. Payment

- 7.1 The Price represents the only costs to be paid by Sunfixings and is inclusive of VAT, levies, duties and other taxes (including those related to import and export) and all



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other costs levied by third parties or otherwise, including (but not limited to) the costs of delivery.

- 7.2 The Supplier shall send a VAT invoice to Sunfixings for the Order within thirty (30) days of delivery and shall ensure that the invoice meets all requirements of any relevant tax authority and is marked with the PO number. Such invoice shall be sent to "Accounts Department, Sunfixings Limited, R3 Bourton Industrial Park, Bourton on the Water, Gloucestershire GL54 2HQ".
- 7.3 Unless otherwise stated in the Order, Sunfixings shall pay all properly invoiced amounts due to Seller within sixty (60) days after receipt of such invoice, with the exception of any disputed amounts which Sunfixings shall be entitled to withhold.
- 7.4 In the event of any dispute the parties shall seek to resolve all such dispute expeditiously and in good faith and the Supplier shall continue performing its obligations under the Order notwithstanding any such dispute.
- 7.5 Sunfixings may set off any amount owing to it by the Supplier against the Price. Payment of an invoice is not evidence or admission that the Goods, Deliverables and/or Services meet the requirements of the Order.
- 7.6 The Supplier warrants that it is tax resident in its country of incorporation.
- 7.7 In the event that the Supplier incorrectly charges VAT the Supplier shall repay to Sunfixings such VAT together with related costs and interest within 30 days of such error being identified or otherwise notified to the Supplier.
- 7.8 In the event that Sunfixings is required by law to deduct withholding tax from the Price Sunfixings shall provide evidence to the Supplier that it has remitted the withholding tax to the relevant tax authority.

### 8. Order Progress

- 8.1 The Supplier shall promptly notify Sunfixings in writing if the Supplier becomes aware that it will (or may) be unable to meet any of its obligations under this Order, specifying the nature of the delay and/or failure and the circumstances which have caused the same. For the avoidance of doubt, providing notice of failure and/or delay will not relieve the Supplier of liability for such failure and/or delay.
- 8.2 The Supplier shall if at any time requested to do so by Sunfixings prepare and send to Sunfixings a manufacturing schedule and progress reports. These reports shall include details of: i) in respect of Goods and/or Deliverables the supply of materials, drawing operation, workforce, storage, tooling process and manufacturing operations and delivery date; and ii) in respect of Services the commencement date, milestones, key dates, status updates, personnel, assembly process and outcomes; and iii) such other information as required by Sunfixings.
- 8.3 Sunfixings (or its representative) shall have the right at any time prior to delivery to inspect the Supplier's premises, inspect and test the Goods, Deliverables and/or the work being carried out in performance of this Order. For this purpose the Supplier shall permit Sunfixings (or its representative) to have access to its premises or shall procure access to the premises of any third party where the Goods, Deliverables and/or Services are located.
- 8.4 If the results of the inspection and/or testing provided for in clause 8.3 above cause Sunfixings to have reasonable concern that the Goods, Deliverables and/or Services do not, or may not, conform with the Specifications, will not be delivered on time or do not conform with any other requirements of the PO Sunfixings may at its option: i) require in writing that the Supplier immediately take such action as is necessary to ensure conformity; ii) require further inspection and/or testing; and/or iii) reject the Goods, Deliverables and/or Services; and/or iv) terminate this Order with immediate effect. For the avoidance of doubt, the Supplier shall at all times remain responsible for its compliance with this Order and shall not be relieved of any liability and/or responsibility for the Supplier's compliance with this Order by reason of this clause 8.

### 9. Designs, Tooling and Sunfixings Materials

- 9.1 Sunfixings owns and retains the ownership of all designs, specifications, documents, drawings, tooling, moulds, dies, equipment, materials, Intellectual Property and/or all other information provided to the Supplier by Sunfixings or on behalf of Sunfixings or paid for by Sunfixings (whether included within the Price or paid separately) (collectively referred to as "Sunfixings' Materials").
- 9.2 Sunfixings grants to the Supplier a non-transferable, non-exclusive, royalty free licence to use the Sunfixings' Materials solely for the purpose of and only to the extent necessary to provide the Goods and/Deliverables and/or to perform the Services in accordance with this Order and such licence shall terminate upon the earlier of the termination or completion of this Order or upon notice by Sunfixings.
- 9.3 The Supplier shall keep the Sunfixings' Materials safe and secure and shall not permit

any third party to have access to, use of or any benefit from any of the Sunfixings' Materials.

- 9.4 Sunfixings shall be entitled to require that the Supplier deliver the Sunfixings' Materials (or specified parts thereof) to Sunfixings at any time upon written notice to the Supplier and the Supplier shall comply with such requirement within five days of such notice.

### 10. Intellectual Property in the Goods, Deliverables and Services

- 10.1 The Supplier has all necessary rights to provide the Goods, Deliverables and/or Services as envisaged by this Order and warrants that the manufacture, supply, use and/or performance of the Goods, Deliverables and/or Services as envisaged by this Order will not cause the infringement of the rights of any third party and that the use and/or enjoyment of the Goods, Deliverables and/or Services will not cause Sunfixings or any customer of Sunfixings to breach the rights of any third party.
- 10.2 The Supplier hereby grants to Sunfixings a transferable, royalty free licence to use such Intellectual Property as is necessary for the full use and enjoyment of the Goods, Deliverables and/or Services.
- 10.3 Where Goods, Deliverables and/or Services are created, developed and/or otherwise designed for the purposes of this Order all resulting Intellectual Property rights shall belong to Sunfixings and the Supplier hereby assigns absolutely by way of present and future assignment all such Intellectual Property Rights to Sunfixings and the Supplier shall take such action as may be required by Sunfixings in order to register or otherwise formally vest such Intellectual Property Rights in Sunfixings.

### 11. Termination

- 11.1 Sunfixings may terminate this Order, in whole or in part, upon written notice to the Supplier at any time prior to the delivery of the Goods and/or Deliverables and/or the performance of Services without liability to Sunfixings except for reasonable payment in respect of any Goods and/or Deliverables which have been delivered to Sunfixings and/or any Services which have been performed prior to termination.
- 11.2 Either Party may terminate this Order immediately upon written notice if the other party is: i) in material breach of the terms of this Order; or ii) unable to pay its debts as they fall due, becomes subject to any order of or application for insolvency, administration, bankruptcy or other similar or equivalent action relating to insolvency.
- 11.3 Sunfixings may terminate this Order if there is a change of control (being a change in the ownership of 50% or more of the issued shares of the Supplier) of the Supplier.
- 11.4 If this Order is terminated for reason of the Supplier's breach of this Order the Supplier shall within 7 days repay to Sunfixings any part of the Price which has been paid to the Supplier and Sunfixings may (at its sole option) return any Goods or Deliverables to the Supplier at the Supplier's expense.
- 11.5 If this Order is terminated for reason of the Supplier's insolvency (as set out in clause 11.2(ii)) any monies paid to the Supplier by Sunfixings shall be immediately repaid to Sunfixings.

### 12. Insurance

- 12.1 The Supplier shall maintain insurance against all foreseeable risks and liabilities which may occur in relation to the Order, Goods, Deliverables and/or Services.

### 13. Warranty

- 13.1 The Supplier warrants that each of the Goods and/or Deliverables and the Services shall: (i) be fit for purpose as held out by the Supplier or made known to the Supplier by Sunfixings; (ii) conform with the Specification; (iii) be manufactured or otherwise produced using materials and practices of the highest standard; (iv) be free from defects (save those caused by normal wear and tear) for a minimum of 10 years or such other minimum period as specified in the PO (or in the case of software for 12 months) from delivery; v) be free from any claim or other right (including, but not limited to, Intellectual Property Right) of any third party; and comply with such additional warranties as are as specified in the PO.
- 13.2 The Supplier warrants that all services supplied to Sunfixings (whether relating to or in connection with the supply of Goods or otherwise, and including, but not limited to, the Services) will be provided with reasonable care and skill.
- 13.3 The Supplier warrants that it shall at all times comply (and shall ensure that its employees, agents, contractors and subcontractors (the "Personnel") so comply) with (i) all applicable laws and regulations which apply to the Supplier, Goods, Deliverables, Services and/or the Order; (ii) Sunfixings' Policies; and (iii) all export and import laws, sanctions and embargoes that relate to the Goods, Deliverables and/or Services



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- 13.4 The Supplier warrants that it has and shall at all times maintain in effect all the licenses, permissions, authorizations, consents and permits required by law or contract to carry out its obligations under the Order.
- 13.5 The Supplier warrants that it shall ensure that any Personnel attending Sunfixings' premises or any other premises instructed by Sunfixings during the performance of the Order comply with all instructions given by (or on behalf of) of Sunfixings and shall at all times comply with Sunfixings' Policies or any other health, safety and environmental policies and standards notified to it by Sunfixings.
- 14. Liability & Indemnity**
- 14.1 The Supplier indemnifies, and holds harmless, Sunfixings and any Sunfixings' Group Company against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder arising out of or occurring in connection with (i) the warranties and representations given by the Supplier in clauses 3, 10, 12 and 13 above; (ii) the Supplier's performance of its obligations and compliance with law, negligence, willful misconduct or breach of or in respect of this Order; (iii) any alleged or actual infringement of any third party's Intellectual Property resulting as a consequence of this Order or otherwise relating to the Goods, Deliverables and/or Services; (iv) any claim or action relating to the importation or export of the Goods, Deliverables and/or Services and/or v) any damage to property and/or loss or injury to any person.
- 14.2 The Supplier shall promptly provide notice to Sunfixings upon becoming aware that any breach or other adverse circumstance relating to this Order has (or is likely to) arise, providing full details of the nature and background of the same. The Supplier shall not enter into any settlement without Sunfixings' prior written consent and if required by Sunfixings shall act according to Sunfixings instructions.
- 14.3 Neither Party limits their liability for death or personal injury, fraud or any liability which cannot by law be limited or excluded.
- 14.4 Save for the indemnity given in clause 14.1, neither party shall be liable to the other party for any indirect, consequential or special loss or damages.
- 14.5 Except in respect of the liability specified in clauses 14.1 and 14.3 above, to which no limitation applies, each party's liability in relation to any other claims relating to each Order shall be limited to the greater of the Price or £1,000,000.
- 15. Confidentiality**
- 15.1 The Supplier will keep all information, materials and goods originating from or relating to Sunfixings and/or the Order (including, but not limited to, specifications, designs, trade secrets, drawings, materials, samples, knowledge, ideas, information, processes, Sunfixings Material etc.) (the "Information and Materials") in strict confidence from the date of the Order and until fifteen years from the earlier of the date of termination or completion of the Order, will only use any of the Information and Materials for the sole purpose and to the extent necessary in order to perform its obligations under the Order. The Supplier will not, without the written prior consent of Sunfixings, disclose any Information and Materials or the existence or details of the Order to any person other than their employees or professional advisers, who need to know the information for the performance of this Order and will ensure that all such persons to whom disclosure is made is bound by and comply with these confidentiality obligations.
- 15.2 The obligations set out in Clause 15.1 shall not apply to information which: (a) has been published other than through a breach of this Order; (b) is lawfully in the possession of the recipient before the disclosure under this Order took place; (c) has been obtained from a third party who is free to disclose it; or (d) which a party is required to disclose by law or for the purposes of a regulatory authority.
- 16. Hazardous Waste**
- 16.1 If at any time the Supplier generates any hazardous waste(s) on Sunfixings' property or the delivery site the Supplier will immediately notify Sunfixings and the Supplier will take such action as required to contain and remove such hazardous waste; the Supplier shall at all times comply with Sunfixings' policies and practices and any applicable law regarding management of hazardous wastes.
- 17. Notices**
- 17.1 Any notice to be given under the Order shall be in writing in English and shall be by personal delivery or sent by signed for delivery, each to the address of the other party as set out in the PO. Such notice shall be deemed to have been given in the case of personal delivery at the time when it is left at the address and in the case of signed for delivery when signed for at the party's address.
- 18. General**
- 18.1 The rights and remedies under this Order are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise.
- 18.2 No failure to exercise or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of any such right, power or remedy or of any other right, power or remedy arising by virtue of this Deed or otherwise.
- 18.3 The terms and conditions of this Order and documents referred to herein constitute the entire agreement between the parties and supersede all previous communications and representations (whether oral or written) relating to the subject matter of this Order.
- 18.4 No variation of this Order shall be effective unless made in writing and signed by both parties.
- 18.5 Nothing contained within this Order shall be deemed to constitute a relationship of agency or partnership between the parties.
- 18.6 If any provisions of this Order are or become invalid, or are ruled illegal, invalid or deemed unenforceable under the current applicable law from time to time in force, it is the intention of the parties that the remainder of this Order shall not be affected thereby. It is further the intention of the parties that in lieu of each such provision which is invalid, illegal or unenforceable there be substituted or added as part of this Order a valid, legal and enforceable provision which shall be as similar as possible in objective to the original provision.
- 18.7 Notwithstanding any other provision of this Order a person who is not a party to this Order shall have no rights under the Contract (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Order.
- 18.9 The Supplier shall not be entitled to assign or otherwise dispose of any rights or obligations under this Order. Any purported assignment in breach of this clause shall be void and confer no rights on the purported assignee.
- 19. Governing Law**
- 19.1 The Order shall be governed in accordance with the laws of England and Wales and each party irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales in relation to the Order.