

# STANDARD TERMS OF PURCHASE FOR GOODS AND / OR SERVICES

## 1. INTERPRETATION AND DEFINITIONS

**1.1** The definitions and rules of interpretation in this clause 1 to clause 24 shall apply to these terms and conditions of purchase for Goods and Services (the "Conditions").

**1.2** Words in the singular shall include the plural and vice versa. A reference to a person includes any natural person, body corporate, unincorporated association, partnership or trust. Headings shall not affect the interpretation of these Conditions.

**1.3** A reference to a statute or statutory provision shall be deemed to include a reference to such statute or statutory provision as in force from time to time and shall include any amendment, extension, consolidation or re-enactment thereof and any subordinate legislation made under it from time to time.

**1.4** A reference to any English term for any action, remedy, method of judicial proceedings, legal document, legal status, court, official or any other legal concept or thing shall, in respect of any other jurisdiction, be deemed to include what most nearly approximates in that jurisdiction to the English legal term.

**1.5** In this Agreement the following words and phrases shall have meanings set out below, unless the context requires otherwise;

**Affiliate:** means in relation to any entity, that entity and any entity Controlling, Controlled by, or under common Control with, the relevant entity.

**Business Day:** means any day (other than Saturday or Sunday) on which clearing banks are open for business in the City of London.

**Control:** shall mean direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**Contract:** shall mean any Order(s) placed in accordance with condition 3 or Supplier's quotation/proposal for Goods and/or Services and Wolsley's acceptance upon these terms and conditions.

**Confidential Information:** means all information disclosed (whether in writing, verbally or otherwise and whether directly or indirectly) by one party to another party including, without limitation, any information relating to Goods and/or Services, operations, processes, plans or intentions, client information, product information, market opportunities and business affairs or those of clients or other contacts that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

**EU:** means the countries who are members of the European Union.

**Force Majeure Event:** means an event or circumstances preventing or delaying either party from performing all or any of its obligations under any Contract, which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of that party, being an act of God, war, riot, civil commotion, terrorist act, explosion, malicious damage, fire, flood or storm.

**Goods:** means any product(s) detailed in the Specification or in any Contract placed by Wolsley.

**Insolvency Event: means:** (a) any distress, execution or other process levied upon any of the assets of the relevant party; (b) the other party suspends, or threatens to suspend, payment of its debts or is, or is deemed, unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act

1986; (c) the relevant party convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) other than a solvent liquidation for the purposes of reorganisation 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 relevant party or notice of intention to appoint an administrator is given by the relevant party or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented to any court for the winding up of the relevant party or for the granting of an administration order in respect of that party, or any proceedings are commenced relating to the insolvency or possible insolvency of that party; or (d) any event occurs, or proceeding is taken, with respect to the relevant party in any jurisdiction in which that other party is incorporated, resides or carries on business that has an effect equivalent or similar to any of the events mentioned in (a) to (c) above.

**Intellectual Property Rights:** means all copyright, database rights, topography rights, design rights, registered designs, trade marks, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world.

**Product Recall:** means Goods withdrawal, recall, stock recovery or warning required by Regulatory Requirements or due to one or more Goods being misbranded, adulterated and/or defective.

**REACH:** means the European Community Regulation on the Registration Evaluation, Authorisation and Restriction of Chemical Substances (EC 1907/2006).

**Regulatory Requirements:** means in relation to any jurisdiction where the Goods are intended to be marketed and/or sold, any and all applicable laws, enactments, orders, regulations and other instruments relating to the design, manufacture, packaging, labelling, storage, handling, marketing, sale, import, export and/or delivery of the Goods together with all relevant regulations, codes of practice and guidance imposed by any governmental, regulatory or trade body from time to time.

**Services:** means any services provided by the Supplier under any Contract together with any other additional services Wolsley wishes to place with the Supplier and confirmed in writing.

**Specification:** means in relation to Goods and/or Services, the technical specifications of those Goods and/or the documents detailing the requirements of the Services; all information of any description which explains the structure, design, operation, functionality of the Goods and/or how the Services will be performed; all information of any description which relates to the maintenance and/or support of the Goods requested by Wolsley or as otherwise agreed in writing by the parties.

**Supplier:** means the person, firm or company that supplies the Goods and/or Services to Wolsley.

**Wolsley:** shall mean such Wolsley Party as the purchaser of Goods and/or Services.

**Wolsley Party:** shall mean Wolsley UK Limited and its Affiliates and/or any of them and "Wolsley Parties" shall be construed accordingly.

## 2. PURCHASE OF GOODS AND/OR SERVICES

**2.1** These Conditions set out the terms and conditions under which the Supplier specified in the relevant Contract shall supply the Goods and/or Services to Wolsley for the benefit of itself and all Wolsley Par-

ties. Without prejudice to the foregoing, inconsistent terms or conditions contained, or referred to, in any quotation, order confirmation, specification, delivery note, invoice or similar document or implied by law, trade custom, practice or course of dealing shall not form part of any Contract.

**2.3** No variation of, or addition or amendment to any Contract or these Conditions shall bind the parties unless expressly made in writing and signed by a duly authorised representative of both parties.

## 3. ORDER PROCESS

**3.1** When Wolsley wishes to place an order for Goods and/or Services (an "Order") it shall send a written order form (an "Order Form") to the Supplier, which shall contain a unique order reference number (the "Order Reference"). The parties shall use the relevant Order Reference in all correspondence to identify each Order.

**3.2** Each Order shall be deemed to be an offer by Wolsley to purchase Goods and/or Services subject to these Conditions. The Supplier shall accept an Order by sending a written confirmation to Wolsley (an "Order Confirmation"). Acceptance of an Order Form by the Supplier shall give rise to a separate Contract between Wolsley and the Supplier for the purchase of the Goods and/or Services specified in the relevant Order Form subject to these Conditions and shall create fully enforceable obligations on the parties. Where a Contract is for more than one item or type of Goods and/or Services, it shall be regarded as a single Contract for all Goods and Services supplied pursuant to that Contract.

**3.3** Wolsley may amend vary or cancel any Order or Contract by notifying the Supplier in writing at any time before the relevant part of the Order is fulfilled, except where additional materials are required, when a new Order will be raised.

## 4. GOODS AND/OR SERVICES

**4.1** All Goods sold and/or Services performed by the Supplier to Wolsley pursuant to any Contract shall conform in all respects to the Specification and Order(s) placed by Wolsley and the Contract. The Supplier acknowledges that conformity of the Goods and/or Services with the Specification, the Order(s) and the Contract is a fundamental term of any Contract and accordingly Wolsley shall be entitled to reject any quantity of the Goods and/or reject any Services not in strict accordance with the Specification, the Order(s) and the Contract.

**4.2** The Supplier represents and warrants to Wolsley that: (i) it has the right to sell the Goods and to pass good title free from any encumbrance to Wolsley; (ii) all Goods supplied by or on behalf of the Supplier to Wolsley shall conform with the Specification, the Order(s) and the Contract and with the quality, quantity, description and other particulars stated in the relevant Order and Contract; and (iii) all Goods supplied by or on behalf of the Supplier to Wolsley shall be of satisfactory quality, fit for purpose and shall be free from all defects in materials, quality and workmanship.

**4.3** The Supplier shall meet any performance dates specified in any Contract. If the Supplier fails to do so, Wolsley may (without prejudice to any other rights it may have):

**4.3.1** terminate the Contract in whole or in part without liability to the Supplier;

**4.3.2** refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Supplier attempts to make;

**4.3.3** purchase substitute Goods and/or Services from elsewhere;

**4.3.4** hold the Supplier accountable for any loss and additional costs incurred; and

**4.3.5** have all sums previously paid by Wolsley to the Supplier under the Contract refunded by the Supplier.

**4.4** The Supplier shall:

**4.4.1** co-operate with Wolsley in all matters relating to the Goods and/or Services;

4.4.2 use reasonable skill and care in the performance of the Services and shall perform the Services in accordance with the highest standards attained by companies offering the same or comparable services;

4.4.3 observe, and ensure that all employees, consultants, agents and subcontractors which it engages in relation to the Goods and/or Services observe all health and safety rules and regulations and any other security requirements that apply at any of Wolseley's premises. Wolseley reserves the right to refuse such persons access to Wolseley's premises, which shall only be given to the extent necessary for the supply of Goods and/or performance of the Services;

4.4.4 notify Wolseley as soon as it becomes aware of any health and safety hazards or issues which arise in relation to supply of Goods and/or Services; and

4.4.5 before the date on which the delivery of Goods and/or Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:

4.4.5.1 the Goods and/or Services;

4.4.5.2 the installation of the Supplier's equipment (where applicable);

4.4.5.3 the use of all documents, information and materials provided by the Supplier or its agents, subcontractors, consultants or employees, relating to the Goods and/or Services;

4.4.6 supply the Goods and/or provide the Services at any site(s) as may be specified by Wolseley;

4.4.7 ensure (where applicable) the Supplier's equipment is in good working order and suitable for the purposes for which it is used and confirms to all UK relevant standards, or requirements or any standard specified by Wolseley.

4.4.8 ensure its personnel are suitably qualified and competent to carry out the services required by Supplier under the Contract.

4.5 Wolseley may at any time make changes in writing relating to any Order(s) including changes in quotation/proposal/Specification. If such changes result in an increase in the costs for the delivery of Goods and/or performance of the Contract an equitable adjustment will be made to the price. Any such claim or adjustment to the price must first be approved by Wolseley in writing before the Supplier proceeds with such changes.

4.6 For the avoidance of doubt, these Conditions shall apply equally to any repaired or replacement Goods supplied by the Supplier.

4.7 If any of the Goods and/or Services fail to comply with the provisions of clauses 4.1 or 4.5, Wolseley shall be entitled to any one or more of the remedies listed in clause 17.

## 5. INSPECTION

5.1 At any time prior to delivery of the Goods to Wolseley, Wolseley shall in accordance with clause 17 have the right to inspect and test the Goods. If the results of such inspection or testing indicate that the Goods do not conform or are unlikely to conform with the Contract or to any Specification, Wolseley shall inform the Supplier and the Supplier shall take such action as is necessary to ensure conformity prior to the due delivery date. Wolseley shall have the right to retest and inspect the Goods prior to delivery.

5.2 The Supplier acknowledges that the precise conformity of the Goods and/or performance Services with the Contract is of the essence of the Contract and Wolseley will be entitled to reject the Goods and/or Services and terminate the Contract under condition 16.1, if the Goods and/or Services are not in conformance with the Contract, however slight the breach may be. Any breach of this condition is deemed a material breach which is not capable of remedy under condition 16.1.

5.3 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods until risk passes in accordance with these Conditions. Wolseley shall not be deemed to have accepted the Goods, nor waived its rights of rejection, as a result of carrying out any inspection or testing pur-

suant to this clause 5.

## 6. DELIVERY

6.1 The Supplier shall arrange delivery of Goods (including unloading and stacking) to the location specified in the relevant Contract (the "Delivery Point"). The Supplier shall arrange at its own cost and expense for suitable transport to the Delivery Point. Unless otherwise stated in the Contract, deliveries and/or performance of Services shall only be accepted by Wolseley during normal business hours.

6.2 The Supplier shall ensure that no Goods are exported and/or imported in violation of the laws of any jurisdiction into or through which the Goods are transported during the course of reaching the Delivery Point. If requested by Wolseley, the Supplier will provide any export licences to Wolseley prior to the relevant shipment.

6.3 The Supplier shall be responsible for any materials and/or Goods which are stored at its premises and, where such materials and/or Goods belong to Wolseley, they shall at all times be kept separate and clearly identified as such. The Supplier shall take all necessary steps to ensure the security of, and preserve the quality of, any Goods while in storage including, without limitation, by keeping them in clean and dry conditions.

6.4 On delivery of the Goods, the Supplier (or its appointed carrier) shall deliver to Wolseley (or its appointed carrier) such documentation as stated in the Order including a proof of delivery stating the relevant Order Reference, a certificate of conformance with the Contract (in such form reasonably requested by Wolseley) and, in respect of Goods supplied from outside of the EU, all relevant export documentation.

6.5 The date for delivery of the Goods and/or performance of the Services shall be specified in the Contract or, if not, delivery shall take place within 28 days of the date of the Order. The time for delivery and/or performance of Services will be of the essence. Any variation of the time of delivery must be expressly agreed in writing by the parties.

6.6 Where Wolseley is obliged to obtain any required import licences in respect of the Goods, the Supplier shall provide Wolseley with all reasonable assistance to obtain such licences.

6.7 If Goods are delivered to Wolseley in excess of the quantities ordered, Wolseley shall not be bound to pay for the excess and any excess shall be, and remain, at the Supplier's risk and shall be returned at the Supplier's cost. Unless expressly stated in the relevant Contract, Wolseley shall be under no obligation to return any packaging material.

6.8 If the Goods are not delivered to the Delivery Point and/or performance of the Services on the due date then, without prejudice to any other rights which it may have, Wolseley reserves the right to: (i) cancel the Contract in whole or in part; (ii) refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Supplier attempts to make; (iii) recover from the Supplier any expenditure reasonably incurred by Wolseley in obtaining Goods and/or Services the same as or similar to the Goods and/or Services, in substitution from another supplier; and/or (iv) claim damages for any additional costs or expenses incurred by Wolseley which are directly attributable to the Supplier's failure to deliver the Goods and/or Services on the due date.

6.9 Where Wolseley 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 Supplier to deliver any one instalment shall entitle Wolseley to treat the whole Contract as repudiated.

## 7. COMPLIANCE

7.1 The Supplier shall, and shall ensure that the Goods and/or Services shall, comply with all relevant Regulatory Requirements. The Supplier shall notify Wolseley immediately on becoming aware of any actual

suspected or threatened breach of this clause 7.1.

7.2 The Supplier shall comply with the procedures and requirements set out in the Supplier's Operations Manual or Supplier's Information Pack (as applicable) and any other policies issued from time to time by a Wolseley Party provided to the Supplier or which can be accessed on the website [www.wolseley.co.uk](http://www.wolseley.co.uk) from time to time.

7.3 If a Product Recall is required by relevant Regulatory Requirements or is deemed necessary by Wolseley, the Supplier shall promptly provide Wolseley with all necessary assistance to enable the Product Recall to be conducted efficiently and with due urgency either by Wolseley or the Supplier.

7.4 The Supplier warrants (where applicable) the Goods supplied shall be compliant with REACH and all other relevant national laws in order for Wolseley to meet its obligation of REACH in the re-sale of Goods.

## 8. PRICE AND PAYMENT

8.1 The price for Goods and/or Services shall be stated in the relevant Contract and, unless otherwise stated in the Contract, shall be in the Supplier's quotation/proposal, subject to Wolseley's acceptance, which shall be fixed for the duration of the Contract, payable in Pounds Sterling (£), and shall be exclusive of value added tax but inclusive of all other charges.

8.2 On or after delivery of the relevant Goods at the agreed Delivery Point and/or the completion of Services (or part of the Services as the case may be), the Supplier shall issue to Wolseley a commercial tax invoice or, if applicable, a zero rated invoice issued by an EU, VAT registered business covered by Intrastat in respect of such Goods and/or Services (each an "Invoice"). The Invoice shall be delivered to such address as notified to the Supplier from time to time and shall quote the Order Reference.

8.3 Wolseley shall pay all correctly addressed and undisputed Invoices within 90 days from the end of the month in which the relevant Invoice was received.

8.4 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 the base rate of Lloyds TSB Bank plc per annum from time to time.

## 9. RISK AND OWNERSHIP

The Goods shall remain at the risk and responsibility of the Supplier until delivery to Wolseley at the Delivery Point is complete (including off-loading and stacking) at which point ownership of the Goods shall also pass to Wolseley. Wolseley shall not however be deemed to have accepted the Goods until it has had a reasonable period of time (being not less than 60 days) to inspect such Goods following delivery or in the case of a latent defect in the Goods until a reasonable time after the latent defect has become apparent.

## 10. PROPERTY

Any and all materials, equipment, tools, dyes and moulds used in connection with the manufacture of the Goods supplied or any equipment supplied for the performance of Services by Wolseley to the Supplier, or which Wolseley commissioned from the Supplier, shall at all times: (i) be and remain the exclusive property of Wolseley; (ii) be held by the Supplier in safe custody at its own risk; (iii) be maintained and kept in good condition by the Supplier until returned to Wolseley; (iv) not be used (including to manufacture the Goods for any other person) or disposed of other than in accordance with Wolseley's written instructions; and (v) be returned to Wolseley immediately upon request.

## 11. INTELLECTUAL PROPERTY

11.1 Wolseley authorises the Supplier to use the Intellectual Property Rights of Wolseley for the purposes only of exercising its rights and performing its obli-

gations under the Contract. The Supplier will have no other rights whatsoever in respect of the Intellectual Property Rights of Wolseley.

**11.2** The Supplier assigns to Wolseley, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the Goods supplied and/or in the performance of the Services as the case may be.

**11.3** The Supplier shall, promptly at Wolseley's request, do (or procure to be done) all such further acts and the execution of all such other documents as Wolseley may from time to time require for the purpose of securing for Wolseley the full benefit of the Contract, including all right, title and interest in the Intellectual Property Rights and all other rights assigned to Wolseley in accordance with condition 14.2.

**11.4** All Wolseley Parties' trade marks and other Intellectual Property Rights shall be and remain the absolute property of the relevant Wolseley Parties. Any benefit or goodwill derived by or arising out of the use of the Wolseley Parties trade marks or other Intellectual Property Rights shall accrue to the relevant Wolseley Party.

## **12. INSURANCE, LIABILITY AND INDEMNITY**

**12.1** The Supplier shall, at its own expense, take out and maintain in full force and effect with reputable insurers, and upon request produce to Wolseley satisfactory evidence of the existence of the same, insurance covering at least all matters which are subject of indemnity or compensation obligations under any Contract, and in particular to cover public and employers liability and professional indemnity insurance. Such insurance cover shall amount to (unless specified to the contrary by Wolseley):-

(i) at least £10 million pounds in respect of Public Liability (Third Party) cover in respect of any one occurrence,

(ii) at least £10 million pounds in respect of Employer's Liability cover in respect of any one occurrence.

(iii) at least £5 million pounds in respect of professional indemnity cover in respect of any one period of insurance.

The Supplier's insurance policies effecting such cover shall have the interest of Wolseley noted thereon and in all respects at the Supplier's expense. The Supplier shall upon request, produce a copy of the policies effecting the insurances required under this Condition, together with documentary evidence that such insurances are properly maintained.

**12.2** The Supplier agrees, as a continuing obligation, to indemnify each and every Wolseley Party against, and to pay on demand an amount equal to, any loss, damages, claim or expenses which each and every Wolseley Party may directly or indirectly suffer or incur at any time or from time to time arising out of or in connection with: (i) any defect in the design, quality or workmanship of the Goods; (ii) any claim that the Goods and/or services provided by the Supplier, or the use or resale of the same by or on behalf of any Affiliate infringes a third party's Intellectual Property Rights whether or not under English law, or other rights arising out of the use or supply of the Goods and/or Services; (iii) any wilful abandonment or fraudulent or dishonest act or omission by the Supplier in respect of its obligations under any Contract; (iv) any claim made against Wolseley in respect of any liability, loss, damage, injury, cost or expense sustained by Wolseley's employees or agents or by any Wolseley or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the delivery of Goods and/or performance of the Services as a consequence of the Supplier's negligence or a direct or indirect breach by the Supplier of the terms of any Contract; (v) any Product Recall; or (vi) any breach of the Contract.

**12.3** Nothing in these Conditions shall limit or exclude either party's liability for (i) death or personal injury resulting from negligence; (ii) fraud or fraudu-

lent misrepresentation; (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982; (iv) defective products that arises under the EU Product Liability Directive (85/374/EEC) and/or the EU General Product Safety Directive (2001/95/EC) (and/or in each case any relevant implementing legislation); or (v) the indemnity contained in clause 12.2(iii).

## **13. STOCK CLEANSE**

**13.1** Wolseley may periodically notify the Supplier in writing of the level of Goods that it requires the Supplier to maintain ("Agreed Stock Levels"). From time to time Wolseley shall undertake an inventory of stocks held by Wolseley and shall supply to the Supplier a copy of such inventory indicating where stock levels are in excess of Agreed Stock Levels ("Excess Stock"). The Supplier shall at its own cost and risk arrange to remove such Excess Stock on a first in first out basis from such locations as Wolseley shall advise and credit Wolseley within 30 days with the net historic cost of such stock.

**13.2** If the Supplier intends to cease manufacture or supply of Goods which forms part of its current range or intends to manufacture or supply Goods that will replace or supersede any part of its current range ("Old Goods") the Supplier shall give notice in writing to Wolseley ("Notification Date") specifying the date on which the Old Goods will cease to be manufactured, supplied or be part of the Supplier's current range or be superseded by any replacement Goods ("Cessation Date"). The Notification Date shall not be less than 12 weeks plus the Goods last time buy lead-time before the Cessation Date.

**13.3** At any time between the Notification Date and the Cessation Date the Supplier will confirm availability levels as requested by Wolseley. Two weeks prior to the Cessation Date Wolseley will withdraw all stock in excess of projected requirements of the Old Goods from branches. On the Cessation Date the Old Goods will be withdrawn from sale by Wolseley and remaining stocks confirmed to the Supplier. The Supplier will provide a full credit note for any Old Goods still in stock or the same stock will be returned to the Supplier, at the Supplier's expense, with a full refund supplied to Wolseley.

## **14. AUDIT RIGHTS AND INSPECTIONS**

**14.1** The Supplier shall maintain full, true and accurate copies of all records (whether in a physical or electronic form) documenting the Supplier's performance of its obligations under any Contract (including, without limitation, any documentation necessary to allow batch movements to be tracked and/or to allow Wolseley to effect a batch recall) until the later of 2 years following the Contract or until such time as required by applicable laws or regulations.

**14.2** The Supplier shall at all times ensure that Wolseley and its personnel are allowed full access to all information, property, records and/or materials relevant to the performance of any Contract. The Supplier will permit Wolseley and its employees or agents access to its factories and other premises from where the Goods are being manufactured or supplied or where data or information relevant to the Goods is held upon reasonable notice for the purpose of inspecting, auditing, verifying, monitoring or testing the methods of manufacture, stocks of finished and unfinished Goods and the manner and performance of any Services (where applicable) of the Supplier's obligations under any Contract. The Supplier shall give Wolseley and its personnel all reasonable assistance and cooperation to enable Wolseley to perform such tasks including by providing copies or extracts of relevant documents or records.

## **15. CONFIDENTIALITY**

**15.1** Each party agrees and undertakes that it will treat all Confidential Information disclosed to it by the

other party in connection with any Contract as strictly confidential and shall use it solely for the purpose contemplated by the relevant Contract and shall not without the prior consent of the other party, publish or otherwise disclose to any third party any such Confidential Information except for the purposes contemplated by the relevant Contract.

**15.2** To the extent necessary to implement the provisions of any Contract, each party may disclose Confidential Information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in clause 14.1.

**15.3** The obligations of confidentiality set out in this clause 14 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of these Conditions; (ii) was in the possession of the receiving party prior to the date of receipt from the disclosing party or was rightfully acquired by the receiving party from sources other than the disclosing party; (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving party without use of or reference to the Confidential Information.

## **16. TERMINATION**

**16.1** Wolseley may terminate any Contract at any time with immediate effect (or following such notice period as it sees fit by giving written notice to the Supplier if: (i) the Supplier commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 15 days after being notified in writing to do so; (ii) the Supplier suffers an Insolvency Event; (iii) the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or (iv) the Supplier suffers a change of Control. **16.2** Termination of any Contract shall be without prejudice to any other rights which Wolseley may have under that Contract and without prejudice to any rights and liabilities which Wolseley may have accrued prior to the date on which termination takes effect.

**16.3** The provisions of clauses 1,7,10,12,14 to 17 and 19 to 24 shall survive termination of any Contract.

**16.4** On termination of the Contract(s) for any reason, the Supplier shall immediately deliver to the Wolseley:

(a) all materials and all copies of information and data provided by Wolseley to the Supplier for the purposes of the Contract. The Supplier shall certify to Wolseley that it has not retained any copies of material or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in condition 15; and (b) all specifications, programs (including source codes) and other documentation and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to Wolseley, who shall be entitled to enter the premises of the Supplier to take possession of them.

**16.5** If the Supplier fails to fulfil its obligations under condition 16.4, then Wolseley may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.

**16.6** On termination of the Contract (however arising), the accrued rights of the parties as at termination shall not be affected.

## **17. REMEDIES**

**17.1** If any Goods are not supplied in accordance with, or the Supplier fails to perform the Services or fails to comply with, any of these Conditions, Wolseley shall be entitled to any one or more of the following remedies at its discretion, whether or not any part of the

Goods supplied and/or performance of Services have been accepted by Wolseley: (i) to rescind the relevant Contract; (ii) to reject the Goods (in whole or in part) and either notify the Supplier that they are available for collection or, if requested by the Supplier, return them to the Supplier (at the risk and cost of the Supplier) and in each case on the basis that either a full refund for the Goods and/or Services so rejected be paid forthwith by the Supplier or a credit equal to the value of the Goods and/or Services be granted to Wolseley by the Supplier; (iii) at Wolseley's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the relevant Contract are fulfilled; (iv) to refuse to accept any further deliveries of the Goods and/or Services but without any liability to the Supplier; and (v) to carry out at the Supplier's expense any work necessary to make the Goods and/or Services comply with the relevant Contract.

**17.2** Wolseley's rights and remedies under this Clause 17 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fit for purpose and correspondence with sample implied into these Conditions by the Sale of Goods Act 1979 (as amended) and/or implied by the Supply of Goods and Services Act 1982.

#### **18. FORCE MAJEURE**

If either party is prevented from or delayed in the performance of any of its obligations under any Contract by reason of a Force Majeure Event, it shall (i) forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to the Force Majeure Event; and (ii) use its best endeavours to mitigate the consequences of, and bring to a close, the Force Majeure Event as soon as possible and keep the other party informed as to the steps which it is taking. If either party is prevented by a Force Majeure Event from the performance of its obligations under a Contract for a continuous period in excess of 20 Business Days, the other party may terminate the Contract forthwith on service of written notice on the party subject to the Force Majeure Event.

#### **19. ENTIRE AGREEMENT**

Each Contract (together with any documents referred to therein) shall constitute the entire agreement and understanding between the parties in connection with its subject matter and supersedes and terminates all prior agreements, undertakings and arrangements (both written and oral) between the parties relating to subject matter of that Contract.

#### **20. ASSIGNMENT**

**20.1** The Supplier shall not, without the prior written consent of Wolseley, assign, transfer, charge, underlet, create any trust over or deal in any other manner in respect of the benefit or burden of any provision of any Contract nor subcontract the whole or any part of its obligations under any Contract.

**20.2** Wolseley may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under any Contract.

#### **21. GENERAL**

**21.1** No waiver of any term, provision or condition of any Contract shall be effective unless expressly made in writing and signed by the waiving party. No waiver of any particular breach of any Contract shall be held to be a waiver of any other or subsequent breach. No omission or delay on the part of any party in exercising any right, power or privilege under any Contract shall operate as a waiver by it of any right to exercise it in future or of any other of its rights under such Contract.

**21.2** Nothing in these Conditions shall be construed to create a partnership, joint venture or employment relationship of any kind between the parties or authorise either party to act as agent for, or otherwise bind,

the other.

**21.3** Wolseley shall be entitled to withhold payment of any sums after they become due by reason of any right of set-off or counterclaim which Wolseley or any Affiliate may have from time to time.

**21.4** If any term or provision of any Contract is held to be illegal or unenforceable, in whole or in part, under any enactment, court order or rule of law, that term or provision shall to that extent be deemed not to form part of such Contract but the enforceability of the remainder of such term or provision and of that Contract shall not be affected.

**21.5** A Contract may be executed as two or more counterparts and execution by each of the parties of any one of such counterparts will constitute due execution of such Contract.

**21.6** Any remedy or right conferred under these Conditions shall be in addition to and without prejudice to all other rights and remedies available to it.

**21.7** Each of the parties shall bear and pay its own costs and expenses incurred in connection with the negotiation, preparation and execution of any Contract.

**21.8** The proper recovery/recycling of waste resulting from electrical and/or electronic Goods purchased under any Contract arising in the EU will be managed by the Supplier at no additional cost to Wolseley (other than the reasonable costs of delivery to the Supplier's designated collection point).

**21.9** The Supplier agrees and accepts that Wolseley does not guarantee any minimum commitment to purchase any Goods and/or Services under any Contract.

**21.10** Any Contract shall contain these terms to the exclusion of all previous oral or written representations, including any terms or conditions which the Supplier purports to apply under an acknowledgement or confirmation of Order, quotation, proposal, Specification, delivery note or similar document. The Supplier acknowledges it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of Wolseley which is not set out in any Contract. Nothing in the Contract shall exclude the liability of any party for fraudulent misrepresentation, notwithstanding any provision of these terms.

#### **22. THIRD PARTY RIGHTS**

A non contracting Wolseley Party (each a "Third Party") shall have the benefit of any Contract to the extent specified in such Contract and may enforce the terms of such Contract accordingly. Subject to the foregoing, the parties do not intend any Contract to be enforceable by any person who is not a party to such Contract and any Contract may be terminated, rescinded or varied in any way by the parties without the consent of the Third Parties.

#### **23. LAW AND JURISDICTION**

These Conditions shall be governed by, and construed in accordance with, English law and each party irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or matter arising out of or in connection with these Conditions or any Contract. Nothing in these Conditions shall limit the right of Wolseley to take proceedings against the Supplier in any country from which the Supplier is providing any of the Goods and/or Services or otherwise operating in connection with any Contract(s), whether concurrently or otherwise.

#### **24. NOTICES**

Any notice or other communication to be given under these Conditions shall be in English, in writing, signed by or on behalf of the person giving it and be expressly written to be for the attention of the company secretary or such other individual as may be notified in accordance with this clause. A notice shall be deemed to have been duly served on a party if (i) it is left at such address for notices specified in the relevant Contract or such other address as the relevant party may notify to the other from time to time in accordance with this clause 24 (the "Authorised Ad-

dress"); (ii) posted by prepaid airmail/first class/registered post addressed to that party at the Authorised Address; or (iii) sent by facsimile transmission to the fax number and for the attention of the relevant individual set out in the Contract, and shall if: (i) personally delivered, be deemed to have been received at the time of delivery; (ii) posted within the United Kingdom, be deemed to have been received on the second Business Day after the date of posting; (iii) posted to an overseas address, be deemed to have been received on the fifth Business Day after the date of posting; or (iv) sent by facsimile transmission, be deemed to have been received upon receipt by the sender of a facsimile transmission report (or other appropriate evidence) that the facsimile has been transmitted to the addressee. PROVIDED THAT where delivery or transmission occurs after 5.30pm on a Business Day or on a day which is not a Business Day, receipt shall be deemed to occur at 9.00 am on the next following Business Day.

#### **25. INCOTERMS 2010**

All purchases made by Wolseley will be subject to INCOTERMS 2010 relating to any international sales made from the Supplier.