

## WAVIN GENERAL CONDITIONS OF PURCHASE – 2016

### PART A

#### 1. Definitions

- 1.1. In these general terms and conditions of purchase ("**Terms and Conditions**"), the following terms shall have the following meanings:

"**Acceptance**": Wavin's acceptance of the Goods, following its inspection of the same pursuant to clause 19.

"**Delivery**": the delivery of the Goods to the location set out in the Purchase Order in accordance with the Specification and these Terms and Conditions (and "**Delivered**" shall be construed accordingly).

"**Goods**": the goods (or any part of them) set out in the Purchase Order, including any associated designs, drawings and models.

"**Good Industry Practice**": the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced contractor engaged in activities the same as or similar to the Goods, Services or Works under the same or similar circumstances.

"**Insolvency Event**": any of the following events: (a) the passing of a resolution for winding up or a court of competent jurisdiction making an order for winding up or dissolution; (b) the appointment of an administrator, receiver, administrative receiver; (c) an encumbrancer taking possession of any assets; (d) being unable to pay debts within the meaning of section 123 of the Insolvency Act 1986; (e) ceasing to carry on business for more than 30 days.

"**Intellectual Property Rights**": patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"**Performance**": the performance of the Services and/or Works in accordance with the Specification and these Terms and Conditions.

"**Price**": the price payable for the relevant Goods, Services and/or Works, as set out in the Purchase Order.

"**Purchase Order**": Wavin's written Purchase Order for Goods, Services and/or Works.

"**REACH**": the European Union regulation concerning Registration, Evaluation, Authorisation and Restriction of Chemicals.

"**Services**": the services (or any part of them) set out in the Purchase Order which are not Works.

"**Specification**": the description and specification regarding the relevant Goods, Services and/or Works set out in the Purchase Order.

"**Supplier**": the person from whom Wavin purchases the Goods, Services and/or Works.

"**TUPE**": the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

"**Wavin**": Wavin Limited and each of its affiliated companies.

"**Works**": the construction and/or installation works as set out in the Purchase Order.

#### 2. Formation, amendment and cancellation of the Agreement

- 2.1. These Terms and Conditions shall apply to and govern the supply of all Goods and Performance of all Services and/or Works by the Supplier, whether or not such supply and/or Performance is carried out pursuant to a Purchase Order. All other terms and conditions are hereby excluded.
- 2.2. Where Wavin requires Goods, Services and/or Works, it will request a quotation from the Supplier. Requests for a quotation shall not be binding on Wavin, but shall be deemed to be an invitation to the Supplier to issue a quotation. Quotations shall be deemed to be an offer to Wavin and shall be valid for a minimum period of 30 calendar days from the date of issue. Any costs attached to issuing a quotation shall not be reimbursed by Wavin.
- 2.3. A Purchase Order shall only come into force if Wavin confirms its acceptance of the Supplier's quotation in writing. In the event of apparent errors, incompleteness of or inconsistencies in the Purchase Order, the Supplier shall inform Wavin accordingly before starting any activity in relation to the fulfillment of such Purchase Order. The consequences of failure to do so shall be entirely at the Supplier's expense and risk.

- 2.4. Subject to clause 5.1, provided always that Wavin shall reimburse the Supplier for all reasonable, properly evidenced costs directly incurred by the Supplier (as at the date of such cancellation) in relation to Goods, Services and/or Works cancelled under this clause 2.4, Wavin shall be entitled to cancel any Purchase Order at any time before Delivery of the Goods and/or Performance of the Services or Works. Where such Delivery and/or Performance is to be carried out in instalments, Wavin shall be entitled to cancel any remaining part of such Purchase Order at any time before the final instalment.

#### 3. Obligations of the Supplier

- 3.1. The Supplier shall ensure that all Goods, Services and/or Works are provided:
- in accordance with the Specification and all relevant provisions of these Terms and Conditions;
  - in accordance with Good Industry Practice;
  - in accordance with the timetable and/or execution schedule set out in the Purchase Order or otherwise approved in writing by Wavin; and
  - by suitably qualified, trained, skilled and experienced personnel.
- 3.2. The Supplier shall conform to the Wavin Supplier Code of Conduct which is published at [www.wavin.co.uk](http://www.wavin.co.uk). Upon request Wavin shall provide a hard copy to the Supplier.

#### 4. Delivery and Performance

- 4.1. Time shall be of the essence in relation to the Delivery of any Goods and/or the Performance of any Services or Works. Without prejudice to any other right or remedy it may have, on each occasion of late Delivery or Performance Wavin shall be entitled to liquidated damages of 0.5% of the Price for each calendar day of delay, up to a maximum of 10% of the total Price. The Supplier acknowledges and agrees that such liquidated damages constitute a reasonable pre-estimate of the loss which Wavin will suffer as a result of such late Delivery or Performance.
- 4.2. The Supplier shall provide Wavin with reasonable prior written notice of any delay in Delivery or Performance (and in any event within 24 hours of the time the Supplier became aware or should reasonably have become aware of such delay).
- 4.3. Delivery or Performance in instalments shall require Wavin's prior written consent. If Wavin so requests, the Supplier shall submit a written production or performance schedule to assist Wavin in progress monitoring.

#### 5. Amendments, contract variations

- 5.1. Wavin shall be entitled (acting reasonably) to amend any Purchase Order before Delivery of the relevant Goods or Performance of the relevant Services and/or Works. If, in the Supplier's view, such amendment increases the Price and/or the timescale for Delivery and/or Performance, the Supplier, before making such amendment, shall inform Wavin of this in writing as soon as possible (and in any event within eight calendar days of receiving Wavin's request). If Wavin (acting reasonably) considers the impacts of such amendment to be unacceptable, Wavin shall be entitled (at its sole discretion) to revoke such amendment or to cancel the Purchase Order forthwith pursuant to clause 2.4.
- 5.2. If the Supplier does not report any impacts to Wavin in accordance with clause 5.1, the Supplier shall be deemed to agree to the requested amendment(s) and no changes to the Price or dates for Delivery and/or Performance shall be accepted. If such amendments have the effect of reducing the volume of Goods to be Delivered or Services and/or Works to be Performed under the Purchase Order, Wavin shall be entitled to a pro rata reduction of the Price.

#### 6. Price

- 6.1. Subject to clause 5, the agreed Price shall be fixed and binding. The Price shall not be increased as a result of changes in circumstances and factors that are not attributable to Wavin, including (without limitation) exchange rates, freight rates, import or export duties, excise duties, levies and other taxes, prices of raw materials or semi-finished products, wages and other services owed by the Supplier to third parties.
- 6.2. Unless otherwise agreed by Wavin in writing, the Price shall include:
- import duties, excise duties, levies and taxes (with the exception of VAT);
  - charges and other levies or costs incurred by the Supplier in the fulfillment of the Purchase Order;
  - fees for the use of Intellectual Property Rights, including any software; and
  - the costs of packaging, transport, storage, insurance premiums, installation and putting into operation on location.
- 6.3. The Price shall be exclusive of amounts in respect of VAT. Wavin shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods, Services and/or Works.

## 7. Invoicing and payment

- 7.1. Unless otherwise agreed in writing by Wavin and subject to clause 7.2, the Supplier shall be entitled to invoice Wavin for the Price following Acceptance of the relevant Goods, Services and/or Works (whichever is later). Wavin shall initiate the payment of the invoiced amount on or before the second day of the second month following the date on which the invoice was received and approved.
- 7.2. If Wavin (acting reasonably) disputes any invoice Wavin shall be entitled to suspend payment of such invoice until such dispute is resolved. Wavin shall be entitled to offset amounts it owes against amounts payable to it by the Supplier
- 7.3. Wavin shall have no obligation to pay any invoices which Wavin receives more than six months after the relevant Acceptance.
- 7.4. If Wavin reasonably believes that the Supplier is insufficiently solvent to fulfill an Purchase Order in full, Wavin shall be entitled to suspend payment of any invoices in relation to such Purchase Order until such Purchase Order is fulfilled in full or until a solvent party has provided sufficient security for fulfillment, which shall be exclusively at Wavin's discretion.
- 7.5. Each invoice shall contain as a minimum:
- Wavin's Purchase Order number;
  - the SAP part number (as applicable);
  - the Supplier's name, address and place of residence or business;
  - the period and the activities to which the invoice relates; and
  - the Supplier's bank account number.
- 7.6. Save for invoices which have been disputed in good faith by Wavin pursuant to clause 7.2, any overdue payment payable under these Terms and Conditions shall accrue interest at a rate of 2% above the Bank of England base rate from time to time from the due date to the date of actual payment.

## 8. Remedies

- 8.1. Without prejudice to any other right or remedy it may have, on each occasion that the Supplier fails to fulfill any part of an Purchase Order in accordance with these Terms and Conditions, Wavin shall be entitled (at its sole discretion) to require the Supplier to:
- remedy such failure forthwith at the Supplier's own cost; or
  - reimburse Wavin in full for any costs or expenses incurred by Wavin in remedying such failure or having such failure remedied by a third party.

## 9. Suspension

- 9.1. Wavin shall be entitled to require the Supplier to suspend its activities under an Purchase Order for any period specified by Wavin. Subject to clause 9.2, Wavin shall reimburse the reasonable and properly evidenced costs of the Supplier incurred directly as a result of such suspension, unless such suspension is due to an act or omission of the Supplier. No further damages or other compensation shall be paid to Supplier.
- 9.2. The Supplier shall be obliged to keep the costs arising from such a suspension to a minimum by taking appropriate effective measures.

## 10. Termination

- 10.1. Without prejudice to any other right or remedy it may have, Wavin shall be entitled to terminate an Purchase Order on written notice if the Supplier:
- commits a material breach of its obligations under that Purchase Order which is not remedied within 21 days;
  - is guilty, or any of its employees, agents or sub-suppliers are guilty, of any act which brings Wavin into disrepute or which in Wavin's reasonable opinion is prejudicial to its interests; or
  - suffers an Insolvency Event.
- 10.2. Subject to clause 7.2, the Supplier shall be entitled to terminate a Purchase Order on written notice if any payment under that Purchase Order is overdue by more than 60 days, provided that the Supplier has given Wavin 30 days' prior written notice that such payment is overdue.
- 10.3. Notwithstanding termination of a Purchase Order for any reason, clauses 12, 15, 17 and 20.3 of these terms shall survive such termination and continue in force.

## 11. Intellectual property rights

- 11.1. All Intellectual Property Rights in respect of Goods developed solely in accordance with Wavin's guidelines, instructions or specification shall vest exclusively in Wavin on creation. To the extent that such Intellectual Property Rights do not vest automatically in Wavin, the Supplier shall execute such documents and take such steps as Wavin may reasonably require in Purchase Order to transfer such Intellectual Property Rights to Wavin.

- 11.2. All Intellectual Property Rights in materials provided by Wavin to the Supplier in relation to the Purchase Order shall remain the property of Wavin and nothing in these Terms and Conditions shall operate to transfer such Intellectual Property Rights to the Supplier. All such materials and any copies shall be returned to Wavin following the termination or fulfillment of the Purchase Order.

- 11.3. The Supplier warrants that the Goods to be supplied do not infringe the Intellectual Property Rights of any third party. The Supplier shall indemnify, hold harmless and keep indemnified Wavin against all costs, losses, damages and expenses arising (directly or indirectly) from third-party claims of the Supplier's actual or alleged breach of such warranty.

- 11.4. The Supplier shall inform Wavin immediately upon becoming aware of any actual or alleged infringement of Wavin's Intellectual Property Rights by a third party.

## 12. Confidentiality

- 12.1. The Supplier shall maintain strict confidentiality in respect of all information which is provided by Wavin about Wavin or about direct contacts of Wavin ("**Confidential Information**") in the course of fulfilling an Purchase Order. Subject to clause 12.2, the Supplier shall not disclose such Confidential Information to third parties in any form without the prior written consent of Wavin.

- 12.2. The Supplier shall be entitled to disclose Confidential Information:

- to its staff insofar as this is necessary for the performance of its obligations under an Purchase Order and provided that the Supplier shall impose the same obligations of confidentiality on such staff as those set out in these Terms and Conditions;
- to the extent that such Confidential Information is already lawfully in the possession of the Supplier on the date on which Wavin discloses such Confidential Information;
- if such Confidential Information enters the public domain, other than as a result of the Supplier (or any third party to whom the Supplier has disclosed the Confidential Information) breaching the provisions of this clause 12; and
- to the extent required by a competent court or regulatory authority, provided that (to the extent legally permissible) the Supplier gives Wavin reasonable prior written notice of its intention to disclose such Confidential Information.

- 12.3. After the fulfillment of the Purchase Order, unless otherwise confirmed in writing by Wavin this clause 12 shall remain in full force for a period of five years.

- 12.4. Both the Supplier and Wavin shall comply with their respective obligations under the Data Protection Act 1998 and all other applicable data protection legislation in respect of any personal data which they receive in the course of fulfilling the Purchase Order.

## 13. Force majeure

- 13.1. In the event of a failure by either party fulfill its obligations due to an event beyond its reasonable control (an "**Event of Force Majeure**"), that party shall not be liable and such obligations shall be suspended for the duration of the Event of Force Majeure. If the Supplier is affected by an Event of Force Majeure which exceeds or is expected to exceed 2 (two) months, Wavin shall be entitled to cancel or terminate the Purchase Order without liability.

- 13.2. An Event of Force Majeure shall not include: staff shortages, strikes, staff illness, delayed delivery and/or unsuitability of materials, raw materials or semi-finished products or services, acts or omissions on the part of suppliers or third parties engaged by a party, and liquidity or solvency problems. The Supplier must inform Wavin immediately of the occurrence of Event of Force Majeure.

## 14. Transfer, third parties

- 14.1. The Supplier shall not be entitled to sub-contract, transfer, novate or assign the Purchase Order either wholly or in part to third parties without Wavin's prior written consent, (which consent shall not be unreasonably withheld).

- 14.2. The Supplier shall be fully responsible for any performance by third parties (including without limitation any sub-suppliers) in the fulfillment of the Purchase Order, as if this were its own performance. The Supplier guarantees that sub-Suppliers and third parties will comply with the provisions of the Purchase Order, the Specification, these Terms and Conditions and all other applicable regulations and provisions.

- 14.3. No provision of these Terms and Conditions is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any third party.

## 15. Liability

15.1. Nothing in the Purchase Order or these Terms and Conditions shall be deemed to limit or exclude the liability of either Wavin or the Supplier for:

- a. death or personal injury caused by its negligence;
- b. fraud or fraudulent misrepresentation; or
- c. any other liability which cannot be validly limited or excluded at law.

15.2. Subject to clause 15.1, Wavin shall not be liable to the Supplier, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for:

- a. loss of profits;
- b. loss of contracts;
- c. loss of goodwill;
- d. loss of anticipated savings; or
- e. any indirect or consequential loss.

15.2. Subject to clause 15.1, Wavin's liability, whether in contract, tort (including negligence), breach of statutory duty or otherwise, in connection with or arising from any Purchase Order shall not exceed the Price.

15.3. The Supplier shall indemnify, hold harmless and keep indemnified Wavin and Wavin's employees, agents and sub-Suppliers against all damages, losses, costs and expenses arising (directly or indirectly) from any act or omission of the Supplier in relation to its performance of its obligations under the Purchase Order.

#### 16. Insurance

16.1. The Supplier shall be obliged to take out and retain adequate insurance at its own expense for its liability under the Purchase Order and in any event such insurance shall provide a minimum cover of £5 million pounds per event for each of (without limitation) professional liability, product liability, employee liability and third-party liability. At Wavin's request, the Supplier shall be obliged to submit the insurance policy or policies to Wavin and evidence of the insurance premiums having been paid.

16.2. The Supplier shall ensure that its insurance policies contain an indemnity to principals clause.

#### 17. Applicable law and dispute settlement

17.1. These Terms and Conditions, the Purchase Order and any dispute, claim or obligation (whether contractual or non-contractual) in connection with or arising out of them shall be governed by the law of England and Wales.

17.2. Subject to clause 31, the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with these Terms and Conditions and/or the Purchase Order, their subject matter or performance.

### PART B

#### 18. Quality and description of the Goods to be supplied

18.1. The Goods to be supplied (and their production process) must:

- a. be in agreement with what is stated in the Purchase Order in terms of quantity, description and quality;
- b. in all respects correspond to and comply with the Specification and the samples and examples shown;
- c. be accompanied by the necessary instructions to Wavin or its staff, so that they can use the Goods independently;
- d. be made of sound new materials and be well constructed;
- e. be fit and ready for the purpose for which they are intended;
- f. be made of components and raw materials of which the origin can be traced;
- g. not contain asbestos or other carcinogenic substances other than those explicitly agreed;
- h. be accompanied by the necessary documents, such as packing lists, certificates, attestations, drawings, instruction manuals, lists of spare parts and maintenance regulations;
- i. comply in all respects with all the applicable statutory requirements, regulations and European directives (including but not limited to the CE and EMC hallmarks and rules regarding REACH) in terms of their design, composition and quality;
- j. bear a type, serial and machine number and an indication of the country of origin in the form of an adequate mark applied by the manufacturer or importer. If this is not possible, the packaging of the Goods shall bear such marks; and
- k. be accompanied by a delivery note to Wavin which also states the names of the manufacturer and the importer, as well as the type and production number, if this involves a party other than the Supplier.

18.2. The Supplier shall ensure that it complies in all respects with the Reach Enforcement Regulations 2008 (as amended) in respect of all Goods Delivered to Wavin. Upon request Supplier shall provide such proof thereof as Wavin may request. The Supplier warrants that the Goods shall not contain Substances of Very High Concern above 0.1 % in weight. The Supplier shall provide Wavin with not less than six months' prior written notice of its intention to amend or discontinue its use of any such substance in Goods to be Delivered. The Supplier shall indemnify, hold harmless and keep indemnified Wavin against all damages, losses, costs and expenses incurred or suffered by Wavin arising (directly or indirectly) from the Supplier's breach of this clause 18.2.

#### 19. Inspection and testing

19.1. Wavin shall be entitled at its sole discretion to inspect (or to procure the inspection of) the Goods ("**Inspection**") within 30 days after Delivery, whether or not in the presence of the Supplier.

19.2. If a specific Inspection has been agreed between Wavin and the Supplier, the Supplier must present the Goods supplied or installed for this Inspection at the agreed location and on the agreed date, and if no date has been agreed, at the earliest date when the Inspection can take place. If no Inspection procedure has been agreed, the parties shall (acting reasonably) agree the industry-standard procedure in accordance with which the Inspection will be carried out.

19.3. The Inspection shall be deemed to have been completed successfully when the Supplier receives Wavin's written Acceptance, which may list small defects that constitute no obstacle to putting the Goods into full operation. Small defects shall be rectified by the Supplier free of charge within five working days of the receipt of the aforesaid communication.

19.4. If the Products are fully or partially rejected after Inspection, Wavin shall report this in writing to the Supplier, stating the reason for this.

19.5. Without prejudice to any other right or remedy of Wavin, if it appears that the Goods, regardless of the results of the Inspection, do not comply with these Terms and Conditions, the Specification, the Purchase Order and/or other applicable criteria, the Supplier shall at its own expense repair or replace (at Wavin's sole discretion) the Goods on demand free of charge within a reasonable period of having received this demand. Without prejudice to its other obligations, the Supplier shall send all replacement parts supplied under this clause 19.5: (i) where the Supplier is based within the EEA, by overnight courier, and (ii) where the Supplier is based outside the EEA, by air freight. Following such repair or replacement the Products shall be subjected to a further Inspection. All costs associated with the new Inspection shall be borne by the Supplier.

19.6. If:

- a. the Supplier does not collect the rejected Goods within ten working days of receiving Wavin's written rejection of such Goods; or
- b. if a second Inspection indicates that the Goods are still not in accordance with all required criteria,

Wavin shall have the right to return the rejected Goods to the Supplier at the latter's expense and shall be entitled to a refund of any amounts already paid within 14 days.

#### 20. Transport, packaging, storage and installation

20.1. The Supplier shall Deliver the Goods on the date specified in the Purchase Order. Delivery shall take place at the time agreed between the parties, in compliance with the Incoterm Delivery Duty Paid (Incoterms 2010). Delivery dates shall be deemed to be final.

20.2. The Supplier shall provide proper packaging, security and proper transport for the Goods in accordance with all applicable regulations. The costs of packaging, transport, storage, insurance and installation of Goods, including the items made available by Wavin, shall be borne by the Supplier. Damage caused during loading, transport and/or unloading shall be at the Supplier's expense, even if the damage is detected at a later time. The Supplier shall be responsible for removing, or processing and/or disposing of packaging materials, dirt, waste and superfluous material at its own expense. In doing so, the Supplier shall observe all laws and regulations applicable at that time.

20.3. The Supplier shall keep a stock of spare parts for the Goods supplied during the customary lifespan of these items, (and in any event for at least ten years after Delivery of the relevant Goods).

20.4. If Wavin requests the Supplier to postpone Delivery, the Supplier shall store, secure and insure the Goods to be supplied appropriately packed and clearly marked as intended for Wavin. Wavin shall reimburse the reasonable, properly incurred and evidenced costs of the Supplier in storing such Goods.

#### 21. Transfer of ownership and risk

21.1. The ownership of the Goods shall pass to Wavin on the earlier of (i) Delivery and (ii) payment by Wavin of the amounts due in respect of such Goods. In the event that Wavin makes payments prior to Delivery, the Supplier shall:

- a. ensure that the Goods are kept separate from all other goods in the Supplier's possession;
- b. keep the Goods identified at all times as Wavin's property;
- c. not remove, obscure or deface any mark or packaging identifying the Goods as Wavin's property; and
- d. permit Wavin to enter into any premises in which the Goods are kept and repossess such Goods if the Supplier suffers an Insolvency Event.

21.2 The risk of loss of or damage in the Goods shall pass to Wavin on Delivery, save where such Goods are to be used by the Supplier at the place of Delivery in the performance of Services and/or Works. Risk in such Goods shall not pass to Wavin until the relevant Services and/Works have been Accepted.

21.3 If Wavin makes items available to the Supplier for the performance of its obligations under the Purchase Order (including without limitation raw materials, semi-finished products, materials and components, models, specifications, drawings, software and information carriers), these items shall remain Wavin's property. Subject to Wavin's written consent, the Supplier shall refrain from any act or omission with regard to these items that Wavin loses the ownership thereof, whether by specification, accession, confusion of property or in any other way whatsoever. The Supplier shall not charge or encumber such items in any way. The Supplier shall have no right of retention or right of suspension in respect of these items. After the fulfillment of the Purchase Order, these items must be returned to Wavin in good condition.

## 22. US Export

22.1. If the Goods incorporate technology that comes under the US Export Administration Regulations and/or US export control laws, the Supplier shall be obliged to notify Wavin of this before Delivery in accordance with the relevant provisions. The Supplier shall indemnify, hold harmless and keep indemnified Wavin against all damages, losses, costs and expenses incurred or suffered by Wavin arising (directly or indirectly) from the Supplier's breach of this clause 22.1.

## PART C

### 23. Supply of Services and Works

23.1. The Supplier shall ensure that all Services and Works are Performed:

- a. with reasonable care and skill;
- b. in accordance with the Purchase Order, the Specification, these Terms and Conditions and all other applicable laws and regulations;
- c. in accordance with the reasonable instructions of Wavin;
- d. in accordance with all applicable Statutory Requirements (as defined below);
- e. in accordance with Good Industry Practice; and
- f. by suitably competent, qualified, trained, skilled and experienced personnel.

23.2 The Supplier shall report on the progress of the Services, Works and all related aspects as agreed, and in the absence of such an agreement on a regular basis in Purchase Order to enable Wavin to monitor the progress sufficiently.

### 24. Supplier's staff

24.1. Prior to any employee, agent or sub-Supplier Performing the Services and/or Works, the Supplier shall, to the extent lawful, ensure that each such employee, agent and sub-Supplier has satisfied any checks/requirements which may be appropriate according to Good Industry Practice or which are reasonably notified by Wavin to the Supplier from time to time.

24.2. The Supplier shall not (without Wavin's prior written consent) use any individual to perform the Services or Works who, to the Supplier's knowledge, having made all reasonable enquiries in accordance with sub-clause 24.1, has been convicted of any serious crime involving violence or threat of violence, theft or other dishonest conduct, drugs or controlled substances, computer-related crimes, or similar crimes which create an increased risk to persons or property located on Wavin's premises or those of Wavin's customers.

24.3. The Supplier shall retain all documents referred to in sub-clause 24.1 for individuals Performing Services and/or Works under the Purchase Order. The Supplier shall permit Wavin to inspect such documents upon prior written notice.

### 25. TUPE

25.1. Where TUPE applies on any transfer of the Services and/or Works pursuant to regulation 3.1 of TUPE, the Supplier undertakes to hold harmless and fully

indemnify and keep Wavin indemnified against all costs, claims, losses, liabilities and expenses which Wavin may incur arising out of or in connection with:

- a. any claim or allegation relating to the employment and/or dismissal of any employee of the Supplier in respect of the period up to (and including) such transfer;
- b. any claim or allegation by any person that their employment transfers to Wavin by virtue of TUPE;
- c. any failure or alleged failure by the Supplier to comply with regulation 11 of TUPE; and
- d. any failure or alleged failure by the Supplier to comply with regulation 13 of TUPE.

## PART D

If the Purchase Order includes the supply of Works, the following provisions (the "Works Provisions") shall apply to the Supplier's performance of such Works. In the event of any conflict or inconsistency between the Works Provisions and the remainder of these Terms and Conditions, the Works Provisions shall prevail to the extent that they apply to the Supplier's provision of Works.

### 26. Works Provisions Definitions

26.1. In these Works Provisions, the following terms shall have the following meanings:

"**CIS Regulations**": the Finance Act 2004 and any regulations made under Section 74 of the Finance Act; the Income Tax (Construction Industry Scheme) Regulations 2005 (CIS 2005/2045) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2007 (CIS 2007/672) and any other statute or subordinate legislation relating to the construction industry scheme as modified from time to time or replaced whether before or after the date of any Purchase Order.

"**CDM Regulations**": the Construction (Design and Management) Regulations 2007 and the Construction (Design and Management) Regulations 2015 and the Health and Safety Commission's approved Code of Practice in relation to such regulations.

"**Defects Liability Period**": unless otherwise stated in the Purchase Order, the date falling 3 calendar months from the date at which completion of the Works is acknowledged by Wavin.

"**Statutory Requirements**": all general or local Acts of Parliament and the regulations and bye-laws of any local or other statutory authority which may be applicable to the Works and the rules and regulations of all public bodies and companies whose property or rights are or may be affected in any way by the Works.

"**Statutory Scheme**": the Scheme for Construction Contracts Statutory Instrument 1998 No 649 (as amended).

### 27. Defects

27.1. The Supplier shall, entirely at its own cost, make good any defects, or faults to the Works which appear before the expiration of the Defects Liability Period and which are due to materials or workmanship not being in accordance with the terms of the Purchase Order, the Specification, or these Terms and Conditions.

27.2. Wavin shall notify the Supplier of any such defects during the Defects Liability Period and such defects shall be rectified within a reasonable time of such notification and in any event within 14 days of the end of the Defects Liability Period.

27.3. Where the Supplier fails to rectify any defects, or other faults notified by Wavin pursuant to this clause 27 within the time required under this clause 27, Wavin shall be entitled to the remedies set out in clause 8.

### 28. Price and payment

28.1. If the Purchase Order specifies (or Wavin and the Supplier otherwise agree) that the duration of the Works is estimated to be less than 45 days, the Price relating to the Works shall be paid by Wavin to the Supplier in accordance with clause 7. If the duration of the Works is estimated to be 45 days or more, the Price for those Works shall be paid in accordance with clauses 28.2 to 28.9 below.

28.2. Subject to clause 28.1, the Price relating to the Works is to be paid by Wavin to the Supplier in accordance with the stage payment dates or interim payment periods set out in the Purchase Order, and if payment of milestones are specified in the Purchase Order, only when those milestones are achieved.

28.3. The Supplier shall submit interim applications to Wavin stating the total amounts he considers due to the Supplier on the application dates set out in the Purchase Order, with all supporting documents as required by Wavin. The payment due date in each case shall be the date on which Wavin receives the Supplier's application pursuant to this clause 28.3 ("**Due Date**"). The final

date for payment shall be the last day of the second month following the Due Date ("**Final Date for Payment**").

28.4. No later than 5 days after the Due Date Wavin shall issue interim certificates stating the amount due to the Supplier, and the basis on which that sum is calculated ("**Payment Notice**").

28.5. Wavin shall pay to the Supplier by the Final Date for Payment:

- a. the sum stated in any Payment Notice issued by Wavin under clause 28.4; or
- b. if Wavin fails to issue a Payment Notice, the sum stated in the Supplier's interim application submitted under clause 28.3,

unless a Pay Less Notice is served in accordance with clause 28.6 in which case Wavin shall pay to the Supplier the amount specified in the Pay Less Notice.

28.6. Not later than 2 days before the Final Date for Payment of any amount due Wavin may give a written notice to the Supplier of Wavin's intention to pay less than the sum stated in the Payment Notice (or the sum stated in the Sub-Supplier's interim application where clause 28.5(b) applies ("**Pay Less Notice**") and such Pay Less Notice shall specify the sum Wavin considers to be due on the date such Pay Less Notice is served and the basis on which that sum is calculated.

28.7. Nothing contained elsewhere in these Terms and Conditions shall in any way limit or exclude any of Wavin's rights to deduct or to set off any sums to which he is or may become entitled, whether as damages or otherwise, from or against the Price or from or against any monies otherwise due to the Supplier under the Purchase Order.

28.8. In the event that Wavin fails to pay the Supplier any amount due under clause 28.3 by the Final Date for Payment of that amount (and has not issued a Pay Less Notice in accordance with clause 28.6) the Supplier shall be entitled to charge interest on such overdue amount in accordance with clause 7.6.

28.9. If Wavin has failed to pay the Supplier by the relevant Final Date for Payment (and has not issued a Pay Less Notice in accordance with clause 28.6), the Supplier shall be entitled to give Wavin 14 days' written notice of its intention to suspend any or all of the Works stating the grounds on which it is intended to suspend performance. The right to suspend performance shall cease when Wavin makes payment in full of the amount due. The Supplier shall be entitled to a fair and reasonable adjustment to the Price in respect of the costs necessarily incurred by him as a result of a valid suspension to be ascertained by Wavin after consultation with the Supplier.

## **29. Termination**

29.1. If the Purchase Order (or the part of the Purchase Order relating to the Works) is terminated, and notwithstanding that the validity of such termination may be disputed by the Supplier:

- a. the Supplier shall immediately protect and secure the Works and shall immediately then leave the site;
- b. the Supplier shall deliver to Wavin all drawings, details, documents and information prepared by or on behalf of the Supplier for the Works; and
- c. Wavin may complete (or arrange for others to complete) any aspect of the Works that remain outstanding at the time of the termination of the Supplier's employment.

29.2. If the Purchase Order (or the part of the Purchase Order relating to the Works) is terminated, Wavin shall not be bound to make any further payment to the Supplier until the full and final cost of completion of the Works by Wavin or others has been ascertained but upon such cost being ascertained Wavin shall issue a certificate stating the amount of any damage, loss and/or expense suffered or incurred by Wavin by reason of such termination and, if such amount when added to the monies paid to the Supplier before the date of termination exceeds the total value of work properly executed up to the date of termination, together with any adjustments to the Price ascertained in accordance with this Contract, the difference shall be a debt payable to Wavin by the Supplier.

## **30. Construction Industry Scheme**

30.1. Wavin is a "Supplier" for the purposes of the CIS Regulations. The Supplier shall provide to Wavin details (including confirmation of its national insurance number / company registration number and unique tax reference number) in Purchase Order to allow Wavin to verify the Supplier's identity with Her Majesty's Revenue & Customs ("**HMRC**") in accordance with the CIS Regulations.

30.2. Where the Supplier is verified by HMRC as being registered as a Supplier who receives payment net of deductions, then 7 working days before the final date for payment of any sum due, the Supplier shall give Wavin details of the direct cost of materials included in the payment and Wavin shall be entitled to make the statutory deduction from that part of the payment which is not in respect of the direct cost of materials. In this clause 30.2 "statutory deduction" means

the deduction in force at the time of payment under section 61 of the Finance Act 2004. Where Wavin has made an error or omission in calculating the statutory deduction, Wavin may correct the error by making deductions from payments due to the Supplier, subject only to an instruction by HMRC to Wavin not to make such a correction.

30.3. Where the Supplier is not verified by HMRC as being registered as a sub-Supplier or is verified as a sub-Supplier entitled to receive gross payments under the CIS Regulations then Wavin shall pay any amount due without making the statutory deduction.

## **31. Dispute Resolution**

31.1. Any dispute or difference arising between the parties in connection with the Supplier's performance of the Works may be referred to adjudication in accordance with the Statutory Scheme.