Day International (U.K.) Limited

General purchase conditions

1. General

These terms and conditions shall be a part of the order. Any different business terms and conditions of the vendor shall only be effective if and in so far as Day International (U.K.) Limited gives its written consent thereto. Orders and all associated declarations must be in the written form in order to be effective. The written form requirement may only be waived in writing.

2. Offers

2.1 Offers shall be submitted at no expense to Flint and shall not form the basis of any obligations for Flint.

2.2 In the offer, the vendor shall keep to the inquiry. If the vendor has a solution which is technically or economically more advantageous, compared to the inquiry, it shall additionally offer this solution to Flint.

3. Orders

The vendor shall confirm each order, stating a binding price and delivery period. If Flint does not have the confirmation within 5 days, Flint shall have the right to rescind the order. Oral agreements shall require mutual written confirmation.

4. Goods to be supplied

4.1 If the vendor changes the manufacturing process, it shall notify Flint of this in all cases, even if the change has no effect on the specification of the goods to be supplied. The vendor shall inform Flint of the composition and/or origin of the goods supplied, and shall provide proof thereof as soon as Flint requests such information and/or such proof for forwarding to the authorities, public institutions, works medical officer etc.

4.2 The vendor shall immediately inform Flint of any insurance it has taken out with regard to the services to be rendered by it, in particular of erection all risks insurance, contractor’s all risks insurance and/or builder’s risk insurance.

4.3 When deliveries of raw materials are made, the number of batches specified in the order shall not be exceeded.

5. Delivery period, partial deliveries, partial performance, contractual penalty

5.1 The vendor shall comply with the agreed delivery deadline. Partial deliveries or partial performance shall require the prior consent of Flint.

5.2 As soon as the vendor becomes aware that it is unable to fulfil its contractual obligations, in whole or in part, or that it is unable to do so at the proper time, it shall immediately notify Flint thereof in writing, stating the reasons and the likely duration of the delay.

5.3 The vendor shall be obliged, at the proper time, to request the documents to be provided by Flint which are necessary for the implementation of the order.

5.4 Flint shall be entitled to suspend the implementation of the delivery for a reasonable period. In this event, the delivery period shall be extended by the period of the suspension.

5.5 Flint shall be entitled to the payment of a contractual penalty amounting to 0.2% of the net order value for each working day by which the deadline is exceeded, unless the vendor is able to prove that it is not responsible for the delay. The contractual penalty shall be limited to a total of not more than 10% of the net order value. If Flint accepts the services rendered by the vendor as performance, Flint shall reserve the right to claim the contractual penalty. This right need not be expressly reserved and may be asserted at any time until the final payment is made. This shall not affect any more wide-ranging claims for compensation. Irrespective of whether the claims for the contractual penalty and/or compensation are asserted, Flint shall have the right to withdraw from the contract.

6. Quality assurance

The vendor shall establish and maintain an effective quality assurance system and shall provide evidence thereof to Flint on request. The vendor shall, at Flint’s request, use a quality assurance system in accordance with DIN ISO 9000 ff. or of an equivalent nature. Flint shall be entitled to inspect this quality assurance system.

7. Inspections during the performance of the work

7.1 Flint shall be entitled to inspect the performance of the work by the vendor. For this purpose, Flint shall be entitled to enter the vendor’s works during normal business hours after notification. The vendor and Flint shall each bear the expenses incurred by them as a result of the inspection.

7.2 If special inspections are agreed, the vendor shall notify its readiness for the inspection at least one week in advance and shall agree upon an inspection date with Flint. If, for reasons for which the vendor is responsible, the contractual item is not ready for inspection by the agreed inspection date or if defects in the contractual item make repeated or further inspections necessary, the vendor shall refund the expenses incurred by Flint in this respect.

7.3 If the vendor has to provide material certificates and/or inspection certificates, it shall bear the costs thereof. The material certificates and/or inspection certificates must be provided at the time of delivery.

7.4 Inspections and the provision of certificates shall not affect Flint’s contractual or statutory purchase and guarantee rights.

8. Passing of risk, shipment, packaging

8.1 The arrangements with regard to the cost and passing of risk on shipment shall comply with the agreed terms of supply in accordance with the Incoterms (as at 2010). The delivery note and packing slip must accompany the delivery in duplicate. The supplier number, order number, material designation and material number, batch number, gross and net weight in kilos, quantity and type of packaging (disposable/reusable) and details of the place of discharge, recipient of the goods and the building where they are to be installed shall be listed in full in all dispatch documents and on the external packaging. Individual containers are to be labelled with the material designation, material number, batch number, date of manufacture thereof and such other information as requested by Flint. The vendor shall keep the vendor’s invoices, purchase agreements and other documents to be provided by him at their disposal for a period of 10 years after the end of the delivery for use by the authorities.

8.2 If, in accordance with the terms of supply, a type of delivery is agreed in which Flint does not engage the carrier, the shipment shall be sent at the vendor’s expense to the destination and may be transported in any manner and by any means of transport, unless the vendor has expressly agreed otherwise. If, however, the vendor has not met any of its obligations, the shipment, transport and storage costs shall be borne by the vendor. The vendor shall bear any additional costs resulting from a failure to comply with any shipment provision or resulting from any more rapid transport in order to comply with the agreed date.

8.3 When duty is payable on third country deliveries, this shall be noted on the documents required for forwarding to the customs authorities, public institutions, works medical officer etc.

9. Work undertaken on site at Flint

For all work undertaken on site at Flint, Flint’s safety guidelines shall be complied with by the vendor and its subcontractors.

10. Complaints about defects

The acceptance of the goods is subject to further inspection and verification, in particular with respect to completeness and accuracy so far as and as soon as such are possible according to due course of business at Flint. Flint shall notify the vendor of any externally visible defects no later than 14 days after delivery and shall notify any other defects immediately after they are discovered. Vendor explicitly waives on an objection of delayed notification.

11. Rights in the event of defects, product liability

11.1 The vendor shall be responsible for its goods and services being free from defects and for the warranted characteristics being present. The vendor guarantees, in particular, that its goods and services are in accordance with the state of the art, the generally recognized technical and industrial medical safety provisions made by the authorities and technical associations, and that they accord with the relevant legal provisions. If machinery, apparatus or equipment is supplied, it must be in accordance with the requirements of the special safety provisions for machinery, apparatus and equipment in force on the date when the contract is performed and it must have a CE mark. Vendor guarantees that the goods correspond to the European regulations No 1907/2006 (REACH-Regulation) regarding the registration, validation, authorizations, limitation of chemicals.

11.2 If a defect becomes apparent within the statutory limitation period for claims in respect of defects, it shall be assumed that this defect already existed at the time when risk passed, unless this assumption is
inconsistent with the nature of the defect. In the event of defects, Flint shall be entitled to demand subsequent performance such as replacement delivery of required products free of defects or to remedy in accordance with the statutory provisions, the choice of the nature of the subsequent performance being a matter for Flint. The vendor shall bear the expense necessary for the purpose of subsequent performance. In dealing with the subsequent performance, the vendor shall be guided by Flint’s operational requirements. If the subsequent performance has not taken place within a reasonable deadline, or if it has been unsuccessful or if the setting of a deadline was unnecessary, Flint shall be entitled to claim the additional rights provided by statute in the event of defects such as but not limited to reduce the purchase price or withdraw the contract. In all cases, Flint may ask for compensation of damages or compensation of expenditures. Flint’s rights arising from any guarantees shall remain unaffected.

11.3 If the vendor fails to comply with its obligation of subsequent performance within the reasonable period which has been set and is not entitled to refuse subsequent performance, Flint shall be entitled to remedy the defect itself or have it remedied by third parties at the vendor’s cost and risk. Flint shall be entitled to demand an advance payment from the vendor in respect of the expenditure necessary for remedying the defects.

11.4 The vendor shall hold Flint harmless from any third party claims arising from non-contractual product liability which are attributable to a fault in the product supplied by the vendor. The vendor shall reimburse Flint in respect of expenditure and costs incurred by Flint as a result of precautionary measures which are necessary to avert a claim arising from non-contractual product liability, e.g. by means of public warnings or recall campaigns, in accordance with the nature and extent thereof. Flint shall immediately notify the vendor when such measures are being carried out.

12. Insurance

12.1 The vendor shall take out, at its own expense, sufficient liability insurance in respect of losses for which it or its agents or vicarious agents are responsible. The level of cover for each loss shall be disclosed to Flint on request. The contractual or legal liability of the vendor shall remain unaffected by the extent and level of its insurance cover.

12.2 Flint shall insure any items lent or leased to it by the vendor against fire and explosion damage.

13. Documents, secrecy

13.1 The vendor shall submit the required plans, calculations or other documents to Flint in the agreed number of copies at the correct time in such a manner that the contractual performance deadlines can be complied with.

13.2 The release of the documents by Flint shall not affect the vendor’s responsibility.

13.3 Any models, samples, drawings and other documents which Flint makes available to the vendor shall be and remain the property of Flint and shall be deemed to be confidential information. The vendor shall keep them secret, as well as all other knowledge of Flint’s operational and business processes acquired in connection with the contractual cooperation, and shall comply with Flint’s copyright. The documents shall only be used for the contractually agreed purpose.

13.4 Any documents prepared by the vendor in accordance with particular data from Flint may be used without restriction by Flint for the contractual purposes. The vendor shall also only use these documents for the contractual purposes and shall not make them available to third parties without Flint’s consent.

13.5 The vendor shall hand over to Flint all documents supplied to it, as well as documents prepared by it in accordance with particular data from Flint, together with copies or duplicates, if Flint requires them to be handed over or if the documents are no longer required for the purpose of carrying out the work.

14. Invoices and payment

14.1 Flint shall be entitled to settle invoices and the contractor’s delivery note number must be stated on the invoice. Invoices must be in accordance with the details in the order with regard to the designation of the goods, price, quantities, order of the items and item numbers.

14.2 Invoices for deliveries or other services to be issued and sent to Flint have to be in accordance with the provisions for invoices as set forth in the applicable value added tax / sales tax / turnover tax regulations of the state whose value added tax / sales tax / turnover tax is imposed on the deliveries or other services charged. In case that the invoices do not meet such requirements, Flint shall have the right to reject such invoices. Payment deadlines shall not run before the date of receipt by Flint of invoices which meet the above mentioned requirements.

14.3 Any invoices which are not in accordance with the above requirements may be rejected by Flint.

14.4 Payment deadlines shall run from the date on which the invoice, in accordance with the above requirements, is received at Flint’s Accounts Department, or, if the credit note procedure is used, from the date on which the receipt of the goods is recorded. Payment shall be conditional upon the delivery or service being found to be correct.

14.5 Payment shall not mean any acknowledgement of terms and conditions and prices and shall not have any effect upon Flint’s rights in the event of defects.

15. Origin of goods

The goods supplied shall comply with the conditions of origin of the EC preferential agreements, if a delivery is being made as part of the trade in preferential goods.

16. Infringement of industrial property rights

The vendor shall ensure that no third party property rights are infringed by Flint as a result of use of the supplies and services in accordance with the contract. The vendor shall hold Flint harmless from all claims made by third parties against Flint on the grounds of infringement of industrial property rights. Any licence fees, expenditure or costs incurred by Flint in order to avoid or to rectify any infringements of property rights shall be borne by the vendor.

17. Working Conditions

17.1 The vendor shall be committed through internal programmes to providing a safe and healthy work environment for its employees, contractors and visitors.

17.2 The vendor shall condemn forced or compulsory labour and shall comply with the respective laws of each country in which it operates.

17.3 The vendor recognises the rights of every child to be protected from economic exploitation and complies with the laws of each country in which it operates in regards to minimum hiring age for employees. Beyond this, he declares to abide the UN Declaration on the Rights of the Child (http://www.unicef.org/lac/spbvbados/Legal/global/General/declaration_child1959.pdf) at all times.

17.4 The vendor shall recognise the dignity of each of its employees, and the right to a workplace free of harassment, abuse or corporal punishment. Decisions on hiring, salary, benefits, advancement, termination or retirement are solely based on the employee’s ability to do the job. The vendor shall not discriminate against anyone on the basis of any characteristic protected by applicable law but shall always, when such action is not addressed or foreseen otherwise by applicable laws, ensure, that no discrimination occurs based on race, creed, disability, gender, marital or maternity status, religious or political beliefs, age or sexual orientation.

17.5 The vendor shall comply with applicable employment laws, regulations and industry standards.

18. Publicity

The vendor shall not refer to the existing business relations without Flint’s prior written consent.

19. Passing on orders

The vendor shall not assign the performance of the order to third parties except with Flint’s prior written consent.

20. Applicable law, jurisdiction


20.2 At Flint’s option, the venue for jurisdiction shall be either Flint’s registered seat or the vendor’s general venue for jurisdiction.