

TERMS AND CONDITIONS

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TERMS AND CONDITIONS

1 Definitions

- 1.1 "Client" means the Company, firm or person identified within the Order Confirmation or Quotation who has engaged the Company to carry out the Contract Works pursuant to these Conditions.
- 1.2 "Company" means P&H Systems Ltd (the Company) with Company number 14304314 of 3.2 The Junction, Charles Street, Horbury, Wakefield, WF4 5FH, United Kingdom.
- 1.3 "Conditions" means the terms and Conditions set out in this document.
- 1.4 "Contract" means the contract between the Client and the Company for the supply of Goods and/or provision of Services in accordance with these Conditions, the Order Confirmation and Quotation.
- 1.5 "Contract Works" means the supply of Goods and/or provision of Services to be carried out by the Company, as described in the Contract.
- 1.6 "Force Majeure Event" means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 1.7 "Goods" means the Goods (or any part of them), equipment and materials provided by the Company as identified within the Order Confirmation and/or the Company's Quotation.
- 1.8 "Intellectual Property Rights" means all intellectual and industrial property rights, including copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, goodwill, rights in confidential information, rights to sue for passing off, domain names and any similar rights. These rights include (a) both registered and unregistered rights; (b) any applications for registration; (c) all renewals, extensions or restorations; (d) existing, future, vested or contingent rights; and (e) rights existing anywhere in the world.
- 1.9 "Order Confirmation" means the written 'Order Acknowledgment' issued by the Company to the Client confirming the Client's order to the Company for the supply of Goods and/or Services.
- 1.10 "Quotation" means the written Quotation provided by the Company to the Client for the supply of Goods and/or Services.
- 1.11 "Services" means the Services (or any part of them) supplied by the Company to the Client, as identified within the Order Confirmation and/or the Company's written Quotation.
- 1.12 "Site" means the address identified within the relevant Order Confirmation or the Company's Quotation.
- 1.13 "Specification" means any relevant description, Specification, plans or drawings for the Goods and/or Services that is agreed in writing by the Client and the Company, or as may be varied in accordance with these Conditions.

2 Basis of Contract

- 2.1 The Contract comes into existence on the date the Company issues the Order Confirmation.
- 2.2 If no Order Confirmation is issued, the Contract comes into existence when the Company commences the Contract Works, including preparation of design documents.
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any terms or Conditions that the Client seeks to impose or incorporate, or which might otherwise be implied by trade, custom, practice or course of dealing. In the event of any conflict, these Conditions shall prevail over any terms and Conditions submitted by the Client.
- 2.5 Upon commencement of the Contract Works, the Client is deemed to have accepted these Conditions.
- 2.6 The Company may require a deposit of up to 100% of the Contract value prior to manufacture or supply. Supply or delivery of the Goods and/or Services may be withheld until payment is received.

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3 Goods

- 3.1 The Company reserves the right to amend the Specification of the Goods if required by any applicable statutory or regulatory requirements and shall notify the Client of any such changes.
- 3.2 Where the Goods are to be manufactured in accordance with a Specification supplied by the Client, the Client shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including direct, indirect and consequential losses, loss of profit, loss of reputation, and all interest, penalties and professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim that the Goods infringe a third party's Intellectual Property Rights as a result of the Company's use of such Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The return of Goods is subject to the Company's prior written agreement, which may be withheld at the Company's absolute discretion.
- 3.4 Bespoke Goods, including modified or customised Goods, are non-refundable unless otherwise agreed in writing.
- 3.5 Any postponement of delivery (in whole or in part) is subject to the Company's prior written approval. The Client acknowledges that any such postponement may result in storage charges payable by the Client, and where the Client requests a postponement, the Company may levy or deduct any additional charges, including storage costs.

4 Delivery and Performance

- 4.1 The Company shall deliver the Goods to the Delivery Location once the Client has been notified that they are ready, subject to the payment terms agreed in the Contract. The Company reserves the right to withhold delivery if the Client has not made any payment that is due prior to delivery.
- 4.2 Delivery dates are estimates only. The Company shall not be liable for any delay in the delivery of the Goods caused by a Force Majeure Event or by the Client's failure to provide adequate delivery instructions or other necessary information.
- 4.3 Claims for damage or loss in transit must be made in writing within three (3) days of delivery or expected delivery.
- 4.4 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the contract.

5 Site Conditions & Client Responsibilities

- 5.1 The Client shall ensure that the Site is safe, accessible and suitable for the Contract Works at all times, including providing adequate lighting, power, access routes and welfare facilities.
- 5.2 All preparatory and enabling works must be completed before the Company attends Site.
- 5.3 The Client shall provide all required permits, inductions, and access arrangements.
- 5.4 The Client must notify the Company of any hazards or Site-specific risks.
- 5.5 If the Company is unable to access or carry out the Contract Works due to any Client-related issue, the Company may recover all reasonable costs incurred at the Company's standard rates, including labour, travel, waiting time and aborted visits.

6 Health & Safety

- 6.1 The Company may suspend work at any time where Site Conditions present a health or safety risk.
- 6.2 Any delays or costs arising from such suspension shall be the responsibility of the Client.
- 6.3 The Client shall ensure that other contractors do not obstruct or interfere with the Company's work at the Site.

7 Supply of Services

- 7.1 Where Services are required under the Contract, and subject to payment including any deposit, the Company shall supply the Services to the Client in accordance with the Order Confirmation and/or the Quotation in all material respects.
- 7.2 The Company may make any changes to the Services that are necessary to comply with applicable laws or health and safety requirements, or that do not materially affect the nature or quality of the Services. The Company shall notify the Client of any such changes.
- 7.3 The Company shall provide suitably qualified and trained operatives to install the Goods and/or provide the Services (as applicable).
- 7.4 Any dates quoted for the provision of Services are estimates only, and time shall not be of the essence for the performance of the Services.

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8 Payment and Valuation

- 8.1 The price for the Goods and/or Services shall be as set out in the Order Confirmation, including any deposit required by the Company. If no Order Confirmation is issued, the price shall be as set out in the Company's Quotation. In each case, the price is subject to adjustment for Variations.
- 8.2 All amounts payable under the Contract are exclusive of VAT, which shall be added at the prevailing rate.
- 8.3 All prices quoted are valid as specified within the Quotation, provided the Company has not withdrawn it.
- 8.4 The Company may increase the price of the Goods and/or Services to reflect any increase in cost to the Company due to:
 - 8.4.1 any changes in Specification or design of the Goods and/or Services which have been requested by the Customer; or
 - 8.4.2 any changes which are defined by the Company to be necessary to any design or Specification provided by the Client; or
 - 8.4.3 any changes to the functional requirements of the Client in relation to the Goods and/or Services.
- 8.5 The Company reserves the right to alter the list price of the Goods without notice.
- 8.6 Minimum carried paid order values and minimum invoice values are at the discretion of the Company.
- 8.7 The Company shall be entitled to invoice the Client for the price of the Goods and/or Services on, or at any time after, their delivery.
- 8.8 Where Contract milestones are in place (including, without limitation, design, Site delivery, assembly and retention stages), the Company shall issue invoices to the Client in accordance with those milestones.
- 8.9 The Client shall pay the price of the Goods and/or Services (less any discount the Client is entitled but without any other deduction) within thirty (30) days of the date of the Company's invoice.
- 8.10 Payment shall be made to the Company's bank account as shown on the Invoice. No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.11 If the Client fails make any payment on the due date then, without prejudice to any other rights or remedy available to the Company, the Company shall be entitled to:
 - 8.11.1 cancel this and any other Contract or suspend any further deliveries or provision of Services to the Client whether in respect of this or any other contract between the Company and the Client.
 - 8.11.2 appropriate payment made by the Client to such of the Goods (or the Goods supplied under any other Contract between the Client and the Company) as the Company may think fit (notwithstanding any purported appropriate by the Client); and
 - 8.11.3 charge the Client interest under the Late Payment of Commercial Debts (Interest) Act 1998 at the statutory interest rate which is 8% plus the Bank of England base rate, together with the fixed sum and reasonable recovery costs permitted by that Act, without prejudice to any other rights or remedies.

9 Variations

- 9.1 Variations to the Contract Works shall not vitiate the Contract. If either party wishes to change the scope or quantity of the Services, Goods, or Specification or any other details set out within the Order Confirmation (a "Variation"), it shall submit details of the requested Variation to the other in writing.
- 9.2 The Company has no obligation to proceed with a Variation unless and until the parties have agreed the necessary changes to the prices and/or time for performing the Contract Works to take account of the Variation.
- 9.3 If the Client requests a Variation, the Company shall within a reasonable time, provide a written Quotation to the Client of the likely time required to implement the Variation and any change to the prices including any direct loss and/or expense.
- 9.4 In the absence of a written Quotation being provided by the Company, or being agreed by the parties, Variations shall be valued on the following basis:
 - 9.4.1 where the Variation work is of a similar character to and is executed under similar Conditions to the original Contract Works, on a fair and reasonable basis including any direct loss and/or expense (if any) with reference to any rates and prices included within the Order Confirmation or Quotation.

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9.4.2 where the Variation work is not of a similar character to the original Contract Works and/or is not executed under similar Conditions, the Variation shall be valued at fair rates and prices plus any direct loss and/or expense (where applicable).

10 Surveys, Measurements & Client-Provided Information

- 10.1 The Client shall provide accurate and complete information, drawings, measurements and Specifications.
- 10.2 The Company is not liable for delays or defects arising from inaccurate or incomplete information.
- 10.3 Additional work arising from incorrect information shall be treated as a Variation.

11 Suspension

- 11.1 If the Client fails to pay any sum due under clause 8 (including any VAT properly chargeable) by the final date for payment, and the failure continues for seven (7) days after the Company has given notice of its intention to suspend performance and the grounds for such suspension, the Company may, without prejudice to its other rights and remedies, suspend performance of any or all of its obligations until full payment is made.
- 11.2 Where the Company exercises its right of suspension under clause 11.1, it shall be entitled to a reasonable amount in respect of the costs and expenses incurred as a result of the suspension.
- 11.3 The Company shall submit an application to the Client for any such costs and expenses and shall provide, with the application or upon request, such details as are reasonably necessary to ascertain the amount due.

12 Force Majeure

- 12.1 The Company shall not be liable to the Client as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- 12.2 If the Force Majeure Event prevents the Company from providing any of the Goods and/or Services for more than six (6) weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Client.

13 Title and Risk

- 13.1 The risk in the Goods shall pass to the Client on completion of delivery at the delivery location.
- 13.2 Title to the Goods shall not pass to the Client until the Company receives payment in full (in cash or cleared funds) for the Goods and any other Goods that the Company has supplied to the Client in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 13.3 Until title to the Goods has passed to the Client, the Client shall:
 - 13.3.1 store the Goods separately from all other Goods held by the Client so that they remain readily identifiable as the Company's property;
 - 13.3.2 not remove, deface or obscure any identifying mark or packaging to the Goods;
 - 13.3.3 maintain the Goods in satisfactory condition and keep them insured against all the risks for their full price on the Company's behalf from the date of delivery;
 - 13.3.4 give the Company such information relating to the Goods as the Company may require from time to time.

14 Limitation of Liability

- 14.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
 - 14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
 - 14.1.2 fraud or fraudulent misrepresentation; or
 - 14.1.3 any other matter which cannot be excluded or restricted by law
- 14.2 Subject to clause 14.1:
 - 14.2.1 the Company shall under no circumstances be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit or any indirect or consequential loss arising under or in connection with the Contract;
 - 14.2.2 the Company's total liability to the Client in respect of all other losses arising under or in connection with the Contract shall in no circumstances exceed the value of the Contract;

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14.2.3 the Company shall not be liable for any direct, indirect or consequential loss (including without limitation pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in delivery of the Goods, provision of the Services, or completion of the Contract Works;

14.2.4 the Company shall under no circumstances be liable to the Client in respect of liquidated damages of any kind.

14.3 This clause 14 shall survive termination of the Contract.

15 Termination

15.1 The Contract may not be cancelled or varied by the Client without the express written consent of the Company. If the Company agrees to accept the Client's cancellation or variation, the Client shall indemnify the Company against all losses, costs, charges and expenses incurred as a result, including (without limitation) loss of profit and the costs of labour and materials.

15.2 The Company may terminate the Contract at any time by giving written notice to the Client if:

15.2.1 the Client commits a material breach of the Contract which is not remediable;

15.2.2 the Client commits a material breach of the Contract which is not remedied within seven (7) days of receiving written notice requiring it to do so;

15.2.3 the Client becomes insolvent within the meaning of sections 113(2) to 113(5) of the Housing Grants, Construction and Regeneration Act 1996 (as amended);

15.2.4 the Client takes any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with its creditors (other than for a solvent restructuring), being wound up, having a receiver appointed to any of its assets, or ceasing to carry on business;

15.2.5 the Client suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

15.2.6 the Client fails to pay any amount due under this Contract by the final date for payment.

15.3 The provisions of this clause 15 are without prejudice to any other rights or remedies which the Company may possess, and termination or expiry of the Contract shall not affect any accrued rights of the Company in respect of any breach existing at or before the date of termination or expiry.

15.4 On termination of the Contract for any reason:

15.4.1 the Client shall immediately pay all outstanding unpaid applications and/or invoices, and the Company may submit an application or invoice for Contract Works supplied but not yet invoiced, which shall be payable on receipt;

15.4.2 the Client shall return any Goods which have not been fully paid for. If the Client fails to do so, the Company may enter the Client's premises or attend the Site to take possession of them.

16 Adjudication

16.1 If any dispute or difference arises under or out of the Contract, either party may refer it to adjudication at any time in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended), without prejudice to any other rights or remedies available to that party.

17 Limitation period

17.1 Notwithstanding the manner in which the Contract is entered into and any provision of the Limitation Act 1980 to the contrary, the Client may not commence any legal action, claim, or proceedings arising out of or in connection with the Contract against the Company after six (6) years from the date of practical completion of the Contract Works.

18 Severance

18.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

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19 Third Party Rights

- 19.1 Unless expressly stated otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 19.2 The Client shall not, without prior written consent of the Company, assign, transfer, charge, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract. Such consent may be withheld at the Company's absolute discretion

20 Governing Law and Jurisdiction

- 20.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England. Without prejudice to the right to refer disputes to adjudication, each party agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

21 Company's Intellectual Property

- 21.1 All Intellectual Property Rights in any designs, drawings, Specifications, reports, calculations, models or other documents created by the Company in connection with the Contract shall remain the sole property of the Company.
- 21.2 The Client is granted a non-exclusive, non-transferable licence to use such documents solely for the purposes of the Contract Works. This licence shall automatically terminate upon completion or termination of the Contract unless otherwise agreed in writing by the Company.
- 21.3 The Client shall not copy, adapt, disclose or use such documents for any purpose other than the performance of the Contract Works without the prior written consent of the Company.
- 21.4 The Client shall not remove, alter or obscure any copyright notices, trade marks or other proprietary markings on the Company's documents, designs or products.
- 21.5 Upon termination or expiry of the Contract, the Client shall promptly return or securely destroy all copies of such documents, drawings and Specifications unless otherwise agreed in writing by the Company.
- 21.6 Nothing in this Contract shall be construed as transferring ownership of any Intellectual Property Rights from the Company to the Client.

22 Client Intellectual Property

- 22.1 All Intellectual Property Rights in any documents, drawings, Specifications, data or other materials provided by the Client to the Company in connection with the Contract shall remain the property of the Client.
- 22.2 The Client grants the Company a non-exclusive, royalty-free licence to use such documents, drawings, Specifications, data or other materials solely for the purposes of performing the Contract Works.
- 22.3 The Company shall not copy, adapt, disclose or use the Client's Intellectual Property for any purpose other than the performance of the Contract Works without the prior written consent of the Client.
- 22.4 Upon completion or termination of the Contract, the Company shall return or securely destroy all copies of the Client's Intellectual Property in its possession, unless otherwise agreed in writing by the Client.

23 Confidentiality

- 23.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Clients, Clients, or suppliers of the other party, except as permitted by clause 23.2.
- 23.2 Each party may disclose the other party's confidential information:
 - 23.2.1 to its employees, officers, representatives, or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, or advisers to whom it discloses the other party's confidential information comply with this clause; and
 - 23.2.2 as may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority.
- 23.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

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24 Data Protection

- 24.1 Both parties shall comply with all applicable requirements of the Data Protection Act 2018 and UK GDPR.
- 24.2 The Company shall process personal data provided by the Client only to the extent necessary to perform the Contract Works and in accordance with its Privacy Policy.
- 24.3 The Client warrants that it has the necessary consents and lawful basis to provide any personal data to the Company for processing under the Contract.

25 Insurance

- 25.1 The Company shall maintain adequate insurance cover, including public liability insurance and employer's liability insurance, to meet its obligations under the Contract.
- 25.2 The Client shall maintain appropriate insurance in respect of risks arising at the Site, including but not limited to property damage and third-party liability.

26 Waste Disposal & Environmental Obligations

- 26.1 Unless stated otherwise, the Company is not responsible for disposal of packaging, waste materials or redundant equipment.
- 26.2 Where disposal is included, it shall be carried out in accordance with applicable environmental legislation.