

TERMS AND CONDITIONS OF SALE



Lumen House
Rockingham Drive
Linford Wood
MK14 6LY

1. GENERAL

(1) These Conditions apply to the Contract to the exclusion of any other terms and conditions. Any conditions contained in the Purchase Order or any of your documents are excluded and performance by us of any aspect of the Contract shall not constitute acceptance of such conditions. No variation to these Conditions shall apply except as may be specifically agreed between us by negotiation and stated in the Contract.

(2) Unless previously withdrawn, the Quotation is valid for the period stated therein, or if no period is stated, for 30 days from date of Quotation.

(3) These Conditions shall apply to and be incorporated into the Contract; and shall prevail over any inconsistent terms or conditions contained, or referred to, in your Purchase Order, confirmation of order, acceptance of a Quotation or specification, or implied by law, trade custom, practice or course of dealing.

(4) Your Purchase Order, or acceptance of a Quotation, constitutes an offer by you to purchase the Work specified in it on these Conditions. No offer placed by you shall be accepted other than:

- (i) by a written acceptance issued and executed by us; or
- (ii) (if earlier) by us starting to provide the Work, when a contract for the supply and purchase of the Work on these Conditions will be established.

Your standard terms and conditions (if any) attached to, enclosed with or referred to in any Purchase Order or other document shall not govern the Contract.

2. DEFINITIONS

(1) The definitions in this Condition 2 apply in these Conditions.

“Conditions” means these terms and conditions and the attached Supplementary Conditions (if any).

“Contract” means the contract between you and us consisting of the Quotation, these Conditions, the Purchase Order and our written acceptance of the Purchase Order.

“Quotation” means the tender or quotation issued by us for the Work.

“Purchase Order” means the order instruction issued by you for the purchase of the Work.

“Work” means the goods and/or services to be supplied by us as identified in the Quotation.

(2) A reference to “writing” or “written” includes faxes and email.

3. DESCRIPTIONS, ETC.

(1) You assume responsibility that goods, services and any designs stipulated by you are sufficient and suitable for your purpose save insofar as your stipulations are in accordance with our specific advice in writing in respect of the Contract.

(2) Specifications, drawings, particulars of weights and dimensions, and similar information submitted by us in the Quotation or prior to formation of the Contract shall be considered approximate only. Descriptions, illustrations and other details contained in our published literature, price lists, data sheets and other advertising matter are intended by way of identification and to present a general idea of the goods described therein, and none of these shall form part of the Contract unless separately and specifically confirmed by us in writing in respect of the Contract. Any drawings, firm information and data which we are required to provide by the Contract will be provided or confirmed at the appropriate time following establishment of the Contract.

4. INSPECTIONS AND TESTS

If the Contract requires that any inspection or test is carried out in the presence of you or your representative, we will provide not less than five days' notice of such inspection or test. In the event of any delay on the part of you or your representative in carrying out such inspection or attending such test, the inspection or test will proceed in the absence of you or your representative and shall be deemed to have been made in the presence of same.

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5. YOUR OBLIGATIONS

You shall:

- (1) provide for us, our agents, sub-contractors and employees, in a timely manner and at no charge, access to any premises designated by you where any part of the Work is to be carried out and data and other facilities which we may request;
- (2) provide such information as we may request for the purposes of the Work and ensure it is accurate in all material respects;
- (3) be responsible (at your own cost) for preparing and maintaining for the supply of the Work any premises designated by you where any part of the Work is to be carried out, including identifying, monitoring, removing and disposing of any hazardous materials in accordance with all applicable laws, before and during the Work at those premises;
- (4) inform us of all health and safety rules and regulations and any other reasonable security requirements that apply at any premises designated by you where any part of the Work is being carried out;
- (5) if our performance of the Work under the Contract is prevented or delayed by any act or omission of you, your agents, sub-contractors or employees or of any third party, we shall not be liable for any costs, charges or losses sustained or incurred by you or any third party arising directly or indirectly from such prevention or delay;
- (6) you are liable to pay to us, on demand, all reasonable costs, charges or losses sustained or incurred by us arising from your fraud, negligence, failure to perform or delay in the performance of any of your obligations under the Contract, subject to us confirming such costs, charges and losses to you in writing.

6. TIME

- (1) Any time for performance stated in the Contract shall be construed as an estimate unless we have agreed a fixed time for performance in conjunction with a provision for liquidated damages for delay in accordance with sub-Condition (2) of this Condition.
- (2) If we have agreed a fixed time for delivery or completion of the Work and we fail to deliver or complete within that time, and if as a result you have suffered direct loss, we undertake to pay for each week or part-week of delay, liquidated damages at the percentage rate per week of the contract price agreed before commencement, up to the maximum percentage rate of 10% of the Contract price. Liquidated damages shall be calculated only on the portion of the Contract price which is referable to such portion of the Work as cannot as a consequence of the delay be used commercially and effectively. Payment of liquidated damages shall be in full satisfaction of our liability for delay.
- (3) Time for performance shall be extended by a reasonable period if delay is due to any cause beyond our reasonable control, including but not limited to strike, lockout, combinations of work people, shortage of labour, fire, frost, accident, breakdown, acts of God, force majeure, and failure to deliver by any of our sub-contractors or suppliers.
- (4) If delay results from a cause for which you or your servants or agents are responsible, we shall be entitled to reimbursement of our resulting additional loss and expense (including but not limited to finance costs arising from any associated deferment of payment).

7. VARIATIONS

- (1) We shall not be obliged to agree to any variation to the Contract. Our agreement to any variation shall be effective from the date of our acceptance in writing of your formal written variation to the Purchase Order or instruction and following notification from us as to any associated change in price and time for delivery.
- (2) In the event that any alteration or modification of the Work becomes necessary owing to a matter for which you or your servants or agents are responsible, including but not limited to any alteration or modification being made to the premises where the Work is to be installed or carried out or to any of your plant or to any plan or design relating to such premises or plant to be constructed, altered or modified, the Contract price will be increased or decreased by the amount (taking into account costs, overheads and profit) reasonably occasioned by such alterations or modifications.
- (3) We may from time to time and without notice, change the Work in order to comply with any applicable safety or statutory or regulatory requirements, provided that such changes do not materially affect the nature of, scope of, or the charges for the Work.
- (4) We may from time to time and subject to your prior written consent, which shall not be unreasonably withheld or delayed, change the Work, provided that such changes do not materially affect the nature or quality of the Work, and where practicable, we will give you at least one month's notice of any change.

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8. PROPERTY AND RISK

(1) The property in the Work shall remain with us until the whole of the price has been paid, irrespective of whether any equipment and materials forming part of the Work have been installed in whole or in part, and we reserve the right to recover equipment and materials for which payment is overdue.

(2) Risk in the Work will transfer to you upon delivery. Unless otherwise stated in the Contract or agreed, delivery will be made ex-works loaded on transport.

9. PRICES

The Quotation is based on the costs of labour, equipment, materials, plant, transport, and conformity with statutory obligations prevailing at the date of the Quotation; in the event of any increase in any of the costs aforesaid between the date of Quotation and the date of delivery or, if applicable, the date of installation or provision of services under the Contract, the labour, equipment, materials, plant and transport will be invoiced upon the basis of the prices prevailing on the date of delivery, installation or provision of the services.

10. PAYMENT

(1) The method of payment is to be agreed between the parties as either your payment terms or as laid out in this clause.

(2) If no terms are discussed or agreed, invoices will be submitted at any time after readiness of goods for despatch or completion of services has been notified to you, and payment in full shall be due within 30 days from the date of invoice. Unless otherwise stated in the Contract, no retention shall be applicable to this contract and payments shall be made without deduction.

(3) Time for payment shall be of the essence of the Contract and in the event of your failure to comply with the terms as to payment (whether the price be payable by instalments or otherwise) we shall have the option to treat the Contract as terminated and to remove any equipment and materials whether already delivered or installed or not, or to suspend performance of the Contract until such terms have been complied with, and you will be liable to indemnify us against any cost, loss, expense or liability arising out of or in connection with such termination or suspension of the Contract and no alleged fault or deficiency in any equipment, materials or workmanship or other form of counter-claim or right of set-off shall entitle you to withhold any payment provided for by the Contract.

(4) Without prejudice to our right to treat the Contract as terminated upon non-payment or to suspend the same and to claim indemnity as aforesaid, interest shall be payable from the date at which any payment falls due in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and any amendments thereto.

(5) The prices stated in the Contract do not include any allowance for Value Added Tax. Any Value Added Tax which may be chargeable shall be shown as a separate amount on each invoice and shall be payable by you at the prevailing rate in addition to the Contract price.

11. DEFECTS

We will make good, by repair or at our option by the supply of a replacement, defects which under proper use appear in the Work within a period of twelve calendar months from the date of delivery of the Work or completion of any services included in the Work and which arise solely from faulty design (other than a design specified by you), materials or workmanship; provided that defective items shall be returned to us carriage and insurance paid if we shall so require. We shall refund the cost of carriage on such returned parts and the repaired or new parts will be delivered by us free of charge as provided in Condition 8(2).

Insofar as permitted by law, our liability under this Condition 11 shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the Work, and save as provided in this Condition and in Condition 15 we shall not be under any liability, whether in contract, tort or otherwise, in respect of defects in the Work.

12. CANCELLATION

(1) You may only cancel the Contract (whether in whole or in part) with our previous written consent, which shall be given or withheld at our sole discretion and upon such terms as we deem fit.

(2) Without prejudice to any other rights or remedies we may have, we shall have the right to cancel the Contract by 7 days' prior notice in writing posted by us or delivered or faxed to you, provided that we shall have no such right once any equipment or materials have been delivered to the premises where they are to be installed.

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(3) Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving prior written notice to the other if:

- (i) the other party commits a material breach of any of the terms of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of the party being notified in writing of the breach; or
- (ii) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

(4) On termination of the Contract for any reason:

- (i) you will immediately pay our outstanding unpaid invoices and interest and, in respect of Work done for which no invoice has been submitted, we may submit an invoice which will be payable immediately on receipt;
- (ii) you will return all of our equipment and materials and if you fail to do so, we may enter the premises where any such equipment and materials are located and take possession of them.

13. HEALTH AND SAFETY

We shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply to your premises and that have been communicated to us in writing, provided that we shall not be liable under the Contract if, as a result of such observation, we are in breach of any of our obligations under the Contract.

14. PATENTS AND INTELLECTUAL PROPERTY RIGHTS

(1) We shall not be liable for the infringement of any patent, registered design, trade mark or other intellectual property right where such infringement results from Work being manufactured or carried out to your design and/or instructions and you will fully indemnify us against any claim in respect thereof howsoever arising.

(2) We and, as applicable, our sub-suppliers shall retain ownership of and all rights in designs, software and other intellectual property developed or supplied by us. You and any servant, agent or client of yours shall be granted a perpetual non-transferable royalty-free licence to use any such designs, software and intellectual property supplied by us under the Contract to the extent necessary for the purpose of constructing, operating and maintaining the premises or plant for which the Work is intended. No other rights shall be granted to you or any servant, agent or client of yours in any intellectual property of ourselves or any sub-supplier of ours.

15. LIMITATION OF LIABILITY

(1) This Condition 15 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:

- (i) any breach of the Contract;
- (ii) any use made by you of the Work or any part of it; and
- (iii) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

(2) All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

(3) Nothing in the Contract limits or excludes our liability for: (i) death or bodily injury caused by our negligence; or (ii) any fraudulent misrepresentation by us or any fraud perpetrated by us.

(4) Our total liability to you arising out of or in connection with the Contract whether arising in contract or tort (including negligence) or for breach of statutory duty or misrepresentation or otherwise shall be capped at contract value up to £1m, our total liability shall not exceed £1m.

(5) We shall not be liable to you whether in contract or tort (including negligence) or for breach of statutory duty or misrepresentation or otherwise for any:

- (i) loss of production,
- (ii) loss of profit,
- (iii) loss of contracts,
- (iv) loss of business,
- (v) deletion of goodwill,
- (vi) corruption of data or information,
- (vii) loss of use or
- (viii) any other special, indirect, consequential or pure economic loss, costs, damages, charges or expenses howsoever arising out of or in connection with the Contract

(6) The provisions of Condition 15 shall survive the expiry or termination of the Contract.

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16. INSOLVENCY

In the event of your bankruptcy or insolvency or in the event of a receiving order being made against you or in the event of you compounding with your creditors or in the event of the commencement of winding up proceedings, (you being a limited company and such proceedings being other than a member's voluntary winding up for the purpose of reconstruction or amalgamation) or in the event of your business being carried on under an administrator or receiver or administrative receiver for the benefit of creditors or any creditor, or if any equivalent event occurs under any applicable law, then we may at our option terminate the Contract forthwith by notice in writing, whereupon all sums due from you shall become due and payable immediately and you shall be liable to us for any loss occasioned in consequence of such termination.

17. STATUTORY AND OTHER REGULATIONS

If the cost to us of performing our obligations under the Contract is increased or reduced by reason of the making or amendment after the date of contract of any law or of any order, regulation, code or standard, the amount of such increase or reduction shall be added to or deducted from the Contract price as the case may be.

18. SCAFFOLDING ETC.

Any scaffolding, plant or equipment which we may provide shall be for the use of our employees and agents only. In the event of any other person in any way making use of such scaffolding, plant or equipment (whether with our consent, expressed or implied, or not) whilst the same is on any premises or site designated by you, any claim which may arise in connection with any accident arising out of or in connection with the use of such scaffolding, plant or equipment by any such person shall be your sole responsibility howsoever such accident be caused and you shall keep us fully indemnified against any such claim whatsoever.

19. CONFIDENTIALITY

(1) You shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to you by us, our employees, agents or sub-contractors and any other confidential information concerning our business or products which you may obtain. You shall restrict disclosure of such confidential material to such of your employees, agents or sub-contractors as need to know the same for the purpose of discharging your obligations to us, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind you.

(2) All materials, equipment and tools, drawings, specifications and data supplied by us to you shall, at all times, be and remain our exclusive property, but shall be held by you in safe custody at your risk until returned to us, and shall not be disposed of or used other than in accordance with our written instructions or authorisation.

(3) This Condition 19 shall survive the termination of the Contract, however arising.

20. DATA PROTECTION

You acknowledge and agree that details of your name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by us and on our behalf in connection with the Work.

21. VARIATION

No variation of the Contract or these Conditions shall be valid unless it is in writing.

22. WAIVER

A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

23. SEVERANCE

(i) If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

(ii) If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

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24. STATUS OF PRE-CONTRACTUAL STATEMENTS

The parties acknowledge and agree that (save in the case of fraud), in entering into the Contract they do not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract other than as expressly set out in the Contract.

25. ASSIGNMENT

You will not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under the Contract. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Contract.

26. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or other wise to bind the other in any way, (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

27. RIGHTS OF THIRD PARTIES

The Contract is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, anyone else.

28. NOTICES

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this Condition 28 is not within normal business hours (meaning 8.30 am to 4.30 pm Monday to Friday on a day that is a business day), at 8.30 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

29. LAW AND JURISDICTION

English law shall be the applicable law of the Contract and the English courts shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.

30. MEDIATION

If any dispute arises in connection with the Contract, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution "(CEDR)" Model Mediation Procedure. Unless otherwise agreed between the parties in writing, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("**ADR notice**") to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than 21 days after the date of the ADR notice. The commencement of a mediation will not prevent us commencing or continuing court proceedings or prevent us from instigating any other form of dispute resolution at any time.

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