

**PHOENIX INSPECTION SYSTEMS LTD
CONDITIONS OF SALE**

1 Definitions

- 1.1 In these conditions (unless the context otherwise requires):
- (a) **"Buyer"** means the person, firm or company with whom the Contract is made;
 - (b) **"Company"** means Phoenix Inspection Systems Limited and also (where the context so permits) its assigns and sub-contractors;
 - (c) **"Company's Premises"** means the premises mentioned in the Company's quotation or other contractual document, or if not so mentioned, the Company's premises at 40 Hardwick Grange, Warrington, Cheshire, United Kingdom;
 - (d) **"Contract"** means the contract between the Buyer and the Company for the sale and purchase of the Goods and/or the Services (as the case may be);
 - (e) **"Goods"** and **"Services"** means the goods (or any instalment or part of them) and services to be supplied pursuant to the Contract.
- 1.2 Words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.
- 1.3 The headings in these conditions are intended for reference only and shall not affect their construction.

2 General

- 2.1 These conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in any order, letter, form of contract or other communication sent by the Buyer to the Company and the provisions of these conditions shall prevail unless expressly varied in writing and signed by a director on the Company's behalf.
- 2.2 Any concession made or latitude allowed by the Company to the Buyer shall not affect the strict rights of the Company under the Contract.
- 2.3 If in any particular case any of these conditions shall be or be held to be invalid or shall not apply to the Contract the other conditions shall continue in full force and effect.

3 Orders

- 3.1 Notwithstanding that the Company may have given a detailed quotation no order shall be binding on the Company unless and until it has been accepted in writing by the Company.

4 Prices

- 4.1 Unless otherwise agreed by the Company in writing:
- (a) the price payable for Goods shall be the list price of the Company current at the date of despatch;
 - (b) all Services shall be charged on the basis of actual time spent, in multiples of thirty minutes subject to a minimum labour charge, in line with the Company's current labour charges, details of which are available on request;
 - (c) in the case of an order for delivery by instalments the price payable for each instalment shall be the list price of the Company current at the date of despatch of such instalment; and
 - (d) the Company's prices are subject to adjustment to take account of any variation in the Company's costs including (but not limited to) variations in wages, the cost of materials, exchange rate fluctuations, alteration of duties and other costs since the date of the Company's quotation or (if no quotation is issued) the Buyer's order. The Company accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if the price set out therein were the original contract price.
- 4.2 All prices are exclusive of value added tax and this will be charged by the Company and will be payable by the Buyer at the appropriate rate.

5 Additional costs

- 5.1 Notwithstanding that the Company might have provided a fixed quotation for the supply of Goods and/or Services, if the Company is required to undertake more work in supplying the Goods or Services than originally contemplated (for reasons including, but not limited to, unforeseen difficulties, additional requirements of the Buyer, variations in the scope of work, inaccuracies or a lack of clarity in the Buyer's specifications) the Company shall be entitled, notwithstanding its quotation, to charge such additional amount as represents the additional work undertaken by the Company in supplying the Goods and/or the Services.
- 5.2 The Buyer shall indemnify the Company in respect of any loss, cost or expense incurred by the Company as a result, directly or indirectly, of the Buyer's instructions or lack of instructions or through any failure or delay whatsoever in taking delivery or through any other act, neglect or default on the part of the Buyer, its servants, agents or employees.

6 Intellectual property

- 6.1 The Buyer shall indemnify the Company against all costs, claims, losses, expenses and damages incurred by the Company or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trade marks, copyright, design right or other intellectual property right occasioned by the importation, manufacture or sale of the Goods and/or the Services if made to the specification or special requirements of the Buyer.

- 6.2 Unless otherwise agreed in writing:

- (a) all intellectual property rights (including, without limitation, patents, registered designs and any rights to apply for the same copyright, design rights, database rights, rights in and to confidential information and know-how) and any rights analogous to the same anywhere in the world and subsisting at any time in the Goods or arising out of or relating to the design and/or manufacture of the Goods or the provision of the Services ("IPR") shall belong to and remain vested in the Company. The Buyer, in return for the Company agreeing to pay £1 (if demanded by the Buyer), assigns with full title guarantee to the Company all its right, title and interest in and to the IPR and agrees to do all things reasonably requested by the Company to vest the IPR in the Company;
- (b) all specifications, drawings, designs, computer software, documents and other information disclosed to the Buyer by the Company shall not be disclosed by the Buyer to a third party and shall be used by the Buyer only to the extent necessary for the Buyer to use the Goods or Services provided. The Buyer shall use at least reasonable measures to maintain the confidentiality and secrecy of such items.

7 Terms of payment

- 7.1 The Buyer shall pay for the Goods and Services within thirty (30) days of the date of the Company's invoice. All amounts invoiced become immediately due upon the occurrence of any of the events referred to in condition 16.
- 7.2 If the Goods are delivered or the Services performed in instalments the Company shall be entitled to invoice each instalment as and when delivery thereof has been made and payment shall be due in respect of each instalment whereof delivery has been made notwithstanding non-delivery of other instalments or other default on the Company's part.
- 7.3 If upon the terms of the Contract the price shall be payable by instalments or if the Buyer has agreed to take specified quantities of Goods or to receive the Services in instalments at specified times a default by the Buyer in the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of outstanding Goods or Services shall cause the whole of the balance of the price to become due forthwith. The Company is entitled cancel or delay shipment of future Goods or performance of Services (or future instalments thereof) at its sole discretion if any amounts invoiced by the Company become overdue.
- 7.4 Buyer shall not be entitled to exercise any set-off, lien or any other similar right or claim against any amounts due to Company for any reason.
- 7.5 The time of payment shall be of the essence of the Contract.
- 7.6 Without prejudice to any other rights it may have the Company is entitled (both before and after any judgment) to charge interest at a rate equal to the higher of the interest rate payable on court judgements or 2% above the base rate from time to time of the National Westminster Bank plc on overdue payments of the price of the Goods and/or the Services or the price of any instalments thereof.

8 Delivery

- 8.1 All times, dates or periods given for delivery of the Goods or supply of the Services are given in good faith but without any responsibility on the Company's part.
- 8.2 Time of delivery or performance shall not be of the essence of the Contract.
- 8.3 Any period for delivery shall be calculated from the time of the Company's acceptance of the Buyer's order or from the Company's receipt of all information necessary to enable the Company to manufacture or procure the manufacture of the Goods or the performance of the Services (in each case whichever shall be the later).
- 8.4 Where the Goods are handed to a carrier for carriage to the Buyer or to United Kingdom port for export any such carrier shall be deemed to be an agent of the Company and not of the Buyer for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.
- 8.5 The Buyer agrees that section 32(3) of the Sale of Goods Act 1979 shall not apply to Goods sent by the Company.
- 8.6 No liability (whether in contract or for negligence or otherwise howsoever) for loss of or damage to the Goods occurring prior to delivery or for any claim that any item of the Goods and/or the Services delivered pursuant to the Contract are defective or are otherwise not in accordance with the Contract (being a defect or loss, damage or non-compliance which would be obvious upon a reasonable inspection of the Goods or the Services) or for non-delivery will attach to the Company unless claims to that effect are notified in writing by the Buyer to the Company (and in the case of claims for loss, damage or non-delivery of Goods with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods):
- (a) within seven days of delivery of the Goods or performance of the Services for loss, damage, defect or non-compliance with the Contract; or
 - (b) within ten days of the date of the invoice for non-delivery of Goods or non-performance of the Services.
- 8.7 In the event of a valid claim for defect, loss, damage, or non-compliance with the Contract or non-delivery the Company undertakes (in the case of Goods) at its option either to reprocess or replace the items concerned or (in the case of Services) re-perform the Services at its expense but shall not be under any further or other liability in connection with such non-delivery, loss, damage or non-compliance.
- 8.8 If the Buyer shall fail to give notice in accordance with condition 8.6 above the items delivered shall be deemed to be in all respects in accordance with the Contract and without prejudice to earlier acceptance by the Buyer it shall be bound to accept and pay for the same accordingly and all claims in respect of non-delivery, loss, damage, defect or non-compliance shall (save as set out in condition 13 below) thereafter be wholly barred.
- 8.9 If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Company may at its sole

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- discretion without prejudice to its other rights and for such period as the Company may determine store the Goods at the Buyer's risk and take all reasonable steps to safeguard and insure them at the Buyer's cost, provided that the Buyer shall be immediately informed thereof.
- 8.10 The Company shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide, and any express provision as to instalments in the Contract shall be in addition to and not in derogation of this right.
- 9 **Returns**
- 9.1 Goods supplied in accordance with the Contract cannot be returned without the Company's prior written authorisation. Duly authorised returns shall be sent to the Company's Premises at the Buyer's expense. Standard stock items returned will normally be subject to a 15% restocking charge, non-stock items are non returnable.
- 10 **Carriage**
- 10.1 Unless otherwise agreed by the Company in writing the Goods will be delivered ex the Company's Premises and the price of the Goods is exclusive of carriage, packing and insurance to the Buyer's premises.
- 10.2 Where the Buyer requests delivery in a manner other than that selected by the Company in condition 10.1 above, any difference in price shall be charged to the Buyer's account.
- 11 **Passing of title and risk**
- 11.1 From the time of delivery the Goods shall be at the Buyer's risk who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the Company's property until all payments to be made by the Buyer under the Contract and any other contract between the Company and the Buyer and on any other account whatsoever have been made in full and unconditionally. Whilst the Company's ownership continues the Buyer shall keep the Goods labelled as belonging to the Company and separate and identifiable from all other goods in its possession as bailee for the Company.
- 11.2 The Buyer may only re-sell the Goods to the Buyer's customers in the ordinary course of the Buyer's business as a fiduciary and trustee for the Company. In the event of any resale by the Buyer of the Goods the Company's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company and until such assignment shall be held on trust in a separate identified account for the Company by the Buyer and such proceeds shall not be mingled with other moneys or paid into any overdrawn bank account and shall at all times be identifiable as the Company's moneys.
- 11.3 Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the Contract the Company shall have power to re-sell the Goods, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.
- 11.4 Pending payment of the full purchase price of the Goods the Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an endorsement recording the Company's interest.
- 11.5 The Company is hereby licensed to enter upon any premises in the ownership, possession or control of the Buyer at any time to recover the Goods.
- 12 **Conditions and warranties**
- 12.1 The Contract shall not constitute a sale by description or sample.
- 12.2 Any conditions or warranties (whether express or implied by statute or common law or arising from conduct or a previous course of dealing or trade custom or usage or otherwise howsoever) as to the quality of the Goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or as to the correspondence of the Goods with any description or sample or as to the care and skill with which the Services will be performed are hereby expressly disclaimed and negated.
- 13 **Defective goods or services**
- 13.1 In substitution for all rights which the Buyer would or might have but for these conditions the Company undertakes:
- (a) in the case of Goods manufactured by the Company that if within three months of delivery of any item of the Goods a defect in materials or workmanship appears therein being a defect which would not be obvious on reasonable inspection thereof (whether such an inspection was carried out or not) it will at its own discretion either credit to the Buyer the full price paid by the Buyer to the Company for such item or repair it or supply a replacement thereof free of charge at the place of delivery specified by the Buyer for the original Goods provided that in any case the original Goods have been accepted and paid for; and
- (b) if any Services have been found to be performed defectively within ninety days of the date of their performance the Company shall (in its sole discretion) reperform such Services free of charge or credit to the Buyer the price paid for such Services.
- 13.2 Failure of the Goods and/or Services to perform in accordance with the Buyer's requirements shall not constitute a defect in the Goods and/or Services or non-compliance with the Contract unless the Buyer and the Company agreed in writing prior to delivery that the Goods and/or Services would perform in accordance with those requirements.
- 13.3 In the case of Goods not manufactured by the Company, the Company will pass on to the Buyer to the extent that it is able any benefits obtainable under any warranty given by the Company's supplier provided that the Goods have been accepted and paid for.
- 13.4 In order to exercise its rights under this condition the Buyer shall inform the Company within seven days of the date when such defect appeared or ought reasonably to have been discoverable and (in the case of defective Goods the Buyer) shall at the Company's written request return the defective Goods carriage paid to the Company's Premises (and in the case of defective Services) the Buyer shall give the Company all reasonable access to its facilities in order to inspect the manner in which the Services had been carried out.
- 13.5 Nothing herein shall impose any liability upon the Company in respect of any defect in the Goods and/or the Services arising out of the acts, omissions, negligence or default of the Buyer, its servants or agents including in particular (but without prejudice to the generality of the foregoing) any failure by the Buyer to comply with any recommendations of the Company as to storage and handling of the Goods.
- 13.6 Where the Goods are for delivery or the Services are to be performed by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery or performance (as appropriate) thereof.
- 13.7 Nothing herein shall have the effect of excluding or restricting the liability of the Company for fraudulent misrepresentation or for death or personal injury resulting from its negligence in so far as the same is prohibited by United Kingdom statute.
- 14 **Buyer's specification**
- 14.1 The Company shall not be liable for imperfect work caused by any inaccuracies in any drawing, bill of quantities or specification supplied by the Buyer.
- 15 **Limitation of liability**
- 15.1 The Company shall not be liable for any costs, claims, damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis.
- 15.2 The aggregate liability of the Company (whether in contract or for negligence or breach of statutory duty or otherwise howsoever) to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price of the Goods or the price for the Services, whichever is applicable.
- 16 **Default or insolvency of Buyer**
- 16.1 If the Buyer shall be in breach of any of its obligations under the Contract or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him or (if the Buyer is a company) if any resolution or petition to wind up such company shall be passed or presented or if a receiver, administrative receiver or administrator of the whole or any part of such company's undertaking property or assets shall be appointed the Company in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between the Company and the Buyer or may (without prejudice to the Company's right subsequently to determine the Contract for the same cause should it so decide) by notice in writing suspend delivery or any further deliveries (as the case may be) of Goods and/or the performance of the Services until any default by the Buyer be remedied.
- 17 **Representations**
- 17.1 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the Company's agents or employees shall be construed to enlarge, vary or override in any way any of these conditions.
- 18 **Force majeure**
- 18.1 The Company shall be entitled to delay or cancel delivery or to reduce the amount of Goods delivered or suspend or cancel the Services to be performed if and to the extent that it is prevented from or hindered in or delayed in manufacturing, obtaining or delivering the Goods by normal route or means of delivery or performing the Services through any circumstances beyond its control including (but not limited to) strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources of supply.
- 19 **Cancellation**
- 19.1 Save as provided in conditions 16 and 18 hereof contracts may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from the said cancellation.
- 20 **Assignment: Sub-contracting**
- 20.1 The Company may assign the Contract with the Buyer or sub-contract the whole or any part thereof to any person, firm or company. The Buyer may not assign this Contract or any right or obligation hereunder without the Company's prior written consent.
- 21 **Governing law**
- 21.1 The Contract shall in all respects be governed by and construed in accordance with the laws of England and Wales and shall be deemed to have been made in England and the Buyer and the Company agree to submit to the non-exclusive jurisdiction of the English courts.