

# General conditions of purchase

## 1. DEFINITIONS

### 1.1 In this Contract:

“Conditions” means these terms and conditions Contract for the purchase by Phelan of Goods and/or Services from the Seller;

“Contract” the Contract between Phelan and the Seller for the supply of Goods and/or Services in accordance with these Conditions;

“Delivery Date” means the date specified by Phelan;

“Goods” means the goods, (or any part of the goods), which Phelan agrees to purchase from the Seller;

“Phelan” means Phelan Construction Limited (Company Number 2147266);

“Seller” means the person or firm from whom Phelan purchases the Goods and/or Services;

“Services” means the services which Phelan agrees to purchase from the Seller.

## 2. CONDITIONS OF PURCHASE

2.1. These Conditions shall apply to the purchase of Goods and/or Services by Phelan from the Seller to the exclusion of all other terms and conditions including any terms on conditions which the Seller may purport to apply under any sales offer or similar document.

2.2 The dispatch or delivery of the Goods by the Seller to Phelan or the commencement of any Services shall be deemed conclusive evidence of the Seller’s acceptance of these Conditions.

2.3 Any variation of these Conditions (including and special terms and conditions) agreed between the parties shall be inapplicable unless agreed in writing by a person authorised for such purpose by Phelan.

## 3. THE PRICE AND PAYMENT

3.1 The price of the Goods and/or Services shall be the price stipulated in the Seller’s published price list (including all discounts) current at the date of Phelan’s acceptance of the Seller’s quotation or the price quoted by the Seller, whichever is the lower. The price is exclusive of VAT which shall be due at the rate current on the date of the

Seller's invoice.

- 3.2 Unless expressly agreed by Phelan payment of the price and the VAT shall be due at the end of the next month following the receipt of the Seller's invoice by Phelan instruction.

#### 4. THE GOODS

- 4.1. The Seller shall ensure that the Goods shall:

4.1.1. be supplied in accordance with their description and Phelan's specification issued to the Seller (if any);

4.1.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for purpose held out by the Seller or made known to the Seller by Phelan, expressly or by implication, and in this respect Phelan relies on the Seller's skill and judgment;

4.1.3 be free from defects in design, materials and workmanship; and

4.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

- 4.2 Phelan may inspect and test the Goods at any time before delivery. The Seller shall remain responsible for the Goods despite such inspection testing and any such inspection or testing shall not reduce or otherwise affect the Seller's obligations under the Contract.

#### 5. THE SERVICES

- 5.1 The Seller shall meet any performance

dates for the Services that Phelan notifies to the Seller and time is of the essence in relation to any of those performance dates.

- 5.2 In providing the Services the Seller shall:

5.2.1 Co-operate with Phelan in all matters relating to the Services, and comply with all instructions issued by Phelan;

5.2.2 Perform the Services with the best care, skill and diligence in accordance with best practice in the Seller's industry, profession or trade;

5.2.3 Use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Seller's obligations are fulfilled in accordance with these Conditions;

5.2.4 Ensure that the Services will conform with all descriptions and specifications set out in any specification issued to the Seller by Phelan;

5.2.5 Provide all equipment, tools and vehicles and such other items as are required to provide the Services;

5.2.6 Obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

5.2.7 Comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;

5.2.8 Observe all health and safety rules

and regulations and any other security requirements that apply at any place where the Services are being carried out.

## **6. ACCEPTANCE OF THE GOODS**

6.1 Phelan shall not be deemed to have accepted any Goods or Services until after it has inspected the Goods and Services and ascertained that they are in accordance with the Contract. Phelan may reject any goods which are not in accordance with the Contract within a reasonable time after such inspection.

6.2 Phelan may by notice to the Seller prior to acceptance reject any Goods which are not in accordance with the Contract. Phelan may set off against any payment due to the Seller whether under this Contract or otherwise the price of such Goods. Unless within a reasonable time of receipt and notice of rejection the Seller collects such Goods Phelan may dispose of them as it shall think fit (provided that if Phelan sells such Goods it shall account to the Seller for the net proceeds of such sale).

## **7. TITLE AND RISK**

7.1 Title to any Goods shall pass on the delivery of the Goods.

## **8. TERMINATION**

8.1 Without affecting any other rights or remedy available to it, Phelan may terminate the Contract with immediate effect by giving written notice to the Customer if:

8.1.1 There is a change of control of the Seller's company; or

8.1.2 The Seller's financial position deteriorates to such an extent that in Phelan's opinion the Seller capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

8.1.3 The Seller commits a material breach of the Contract; or

8.1.4 Phelan no longer requires the goods

8.2 Phelan may terminate the Contract with immediate effect by giving notice in Writing if the Seller becomes subject to any of the following events:

8.3 The Seller suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

8.4 The Seller commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

8.5 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of Phelan, other than for the sole

- purpose of a scheme for a solvent amalgamation of the Seller with one or more other companies or the solvent reconstruction of the Seller;
- 8.6 (being an individual) The Seller is the subject of a bankruptcy petition or order;
- 8.7 a creditor or encumbrancer of the Seller attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 8.8 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over The Seller;
- 8.9 (being a company) a floating charge holder over The Sellers assets has become entitled to appoint or has appointed an administrative receiver;
- 8.10 a person becomes entitled to appoint a receiver over the Seller's assets or a receiver is appointed over the Sellers assets;
- 8.11 any event occurs, or proceeding is taken, with respect to the Seller in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.5.1 to clause 9.5.8 inclusive;
- 8.12 The Seller suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business; or
9. The Seller's financial position deteriorates to such an extent that in Phelan's opinion the Sellers capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

## **10. REMEDIES OF PHELAN**

- 10.1 The Seller shall indemnify Phelan against all claims made by customers of Phelan arising out of any breach by the Seller of any Contract.
- 10.2 Without prejudice to the other rights of Phelan for breach by the Seller where any of the Goods or Services provided to Phelan are not in accordance with a Contract the Seller shall at the option of Phelan re-perform the Services or in the case of Goods repair or replace such Goods. If it is necessary to open up or dismantle any other works or assemblies to admit such repair or replacement of Goods or re-performance of Services than the Seller shall bear the cost of such opening up or dismantling and of reassembly and making good.

## **11. INTELLECTUAL PROPERTY**

- 11.1 Where any specification and design of the Goods or any of them are provided by Phelan the copyright, design right and other intellectual property in them shall remain the property of Phelan.

## **12. SET OFF AND COUNTER CLAIM**

12.1 Phelan may set off against any sums due to the Seller whether under any Contract or otherwise any lawful set off or counterclaim to which Phelan may at any time be entitled.

### **13. NON WAIVER**

13.1 In no event shall any delay, neglect or forbearance on the part of Phelan in enforcing (in whole or part) any provision of this Contract be or be deemed as a waiver thereof or a

waiver of any other provision or shall in any way prejudice any right of the Phelan under this Contract to require strict compliance with the terms herein.

### **14. JURISDICTION**

14.1 All Contracts shall be governed and interpreted in accordance with the laws of England the parties agree to submit to the jurisdiction of the courts of England.