

# Phoenix Retail Services

## STANDARD TERMS AND CONDITIONS

### 1 CONTRACTS

(a) A tender or quotation by Phoenix Retail Services Limited (hereinafter called "The company") is merely an invitation for an Order subject to these conditions. Any contract will have incorporated in it and be subject to the conditions herein set out.

(b) The purchaser represents and confirms that he is not dealing as a consumer and is purchasing the goods for use in his business. These terms and conditions shall not be regarded by the parties as written standard terms of business for the purpose of Section 3 of the Unfair Contract Terms Act 1977.

### 2 VARIATION

This Agreement and the terms and conditions contained herein shall not be varied, modified, cancelled or suspended except by express written agreement between the Company and the purchaser.

### 3 PRICES

Subject to the following conditions the contract price shall be that contained in the tender or quotation made by the company provided that the Company and purchaser reach a concluded agreement within 30 days after the date of such tender or quotation.

Provided always that:-

(a) Prices are subject to increase equal to any taxes, duties or charges which the Company may be required to collect or pay in respect of the contract subject matter and further in the event of the cost to the Company of materials and/or production or installation being increased after the date of contracting and prior to delivery by circumstances beyond the control of the Company. The purchaser shall be liable to pay to the Company such further sum as the Company may reasonably consider to represent such increase costs.

(b) In the event of installation of the subject matter of the contract or any accessories thereto, being delayed or prolonged by any act or omission of the purchaser or any restrictions upon access to the installation site, howsoever occasioned the purchaser may be liable to pay to the Company a further sum calculated at the daily rates then in use by the Company for the hire of the equipment ordered by the purchaser and for the avoidance of doubt this condition shall apply in cases of quotations for goods to be delivered over period.

### 4 PAYMENT

(a) Payment in full of the price calculated in accordance with condition 3 hereof shall be due on delivery of the Company's invoice provided that the company will normally allow without being legally obliged to do so, payment to be made within 30 days of the date of the invoice.

(b) The company shall be entitled, as a condition precedent to performing their contractual obligations hereunder, to require payment of all or part of the price at the time of contracting.

(c) The purchaser shall be liable to pay interest to the Company at 4 % above the HSBC Bank Base Rate for the time being in force if payment is not made within 30 days of the date on the invoice.

### 5 TITLE AND RISK

(a) The company at all times reserves the legal and beneficial ownership in the goods sold by them until payment has been made by the purchaser in full of all sums owing by the purchaser to the Company and the purchaser hereby authorises the Company to enter without prior notice on the purchaser's premises to recover any goods which are not paid for in accordance with these conditions.

(b) The company shall be entitled, as a condition precedent to performing their contractual obligations hereunder, to require payment of all or part of the price at the time of contracting.

(c) Until payment has been made in full of all sums owing by the purchaser to the Company the purchaser shall be bailee for reward of the said goods (the consideration for which is the use of the goods until payment is effected or until the goods are repossessed). Without prejudice to the generality of the foregoing the purchaser whilst acting as bailee shall not dispose of, damage or deal with the said goods and will insure the same for their full replacement value.

### 6 DELIVERY

(a) Times for delivery and/or other completion of the contract shall be those stated in the Company's tender or quotation acceptance or acknowledgement of orders (the latter prevailing in the event of any discrepancy) and the computation thereof shall begin with the date of acceptance or acknowledgement of order of receipt of full and final instructions enabling the Company to proceed whichever be the latter.

(b) Times for delivery and/or completion shall be extended by period or periods as in the Company's sole discretion necessary if any information or instructions which are to be by the purchaser so as to enable the products to be hereunder to be completed, tested and/or delivered are not so provided as and when agreed or in any event within such reasonable time as may be specified by the Company prior to or during the course of performance of the contract.

(c) The company will attempt to comply with statements as to times for delivery and/or completion which times are given in good faith, but the Company cannot guarantee the same and no liability shall be imposed upon the Company

by reason of delay occasioned by circumstances over which the Company does not have complete control.

(d) "Times" specified in the Company's tender or quotation or acceptance or acknowledgement of order are estimates only and do not constitute terms, warranties, conditions or representations.

### 7 INCLEMENT WEATHER

In the event of inclement weather, which expression shall include any weather conditions which adversely affect the goods supplied hereunder, or any circumstances arising from the same delaying the installation of the goods, the Company reserves the right to make such charges as it considers in its sole discretion, reasonable for lost time or damage to materials.

### 8 INSTALMENT CONTRACTS

If the agreement provides for or permits or requires delivery by instalment then, each instalment shall be treated as a separate contract and the Company shall be entitled to withhold delivery or any further instalment until all monies for any delivered instalments have been paid.

### 9 DAMAGE, SHORTAGE OR LOSS

The Company can only accept liability for damage in transit or shortage of delivery if the Company is notified within the time limits prescribed by the carriers general conditions and if the Company is not notified within such time limit(s) the goods will be deemed to have been delivered and be in accordance with the contract in all respects. For the avoidance of doubt the time limit referred to in this condition are as follows:

(a) In the case of damage or shortage within three days of the date of delivery, notice to be given to the purchaser.

(b) In the case of total loss within 2 days of the date of delivery as specified in the tender or quotation to the Company and the carrier.

### 10 CARRIAGE

Goods are delivered carriage paid in the United Kingdom on orders valued £50.00 or over (except for special deliveries as below). On orders under this value goods will be delivered carriage paid and a non-returnable packing charge made on the invoice at cost. Extra cost of special delivery at the request of the purchaser by express methods of transport will be charged to the purchaser. Goods for export are delivered ex works the Company. Any arrangements made by the Company to deliver goods elsewhere are made at the purchaser's risk and expense and the Company will render invoices to the purchaser in respect of the cost of deliveries which will be paid in accordance with Clause 4 hereof.

### 11 DEFECTIVE PRODUCTS

The company's liability in respect of any claim of any kind (except death or personal injuries resulting from negligence) for any loss of damage arising out of or connected with or resulting from the contract (including any representation or warranty written or oral made or given prior thereto) or from the performance or the breach of the terms thereof, or from the design, manufacture, sale, delivery, re-sale, installation, repair operation or use of any goods or part thereof supplied hereunder shall in no case extend beyond the repair or replacement of defective products and the Company shall discharge any liability hereunder subject to the following:

(a) If the goods are manufactured by the Company and is proved to their satisfaction that the goods are defective they will replace or repair (as the Company may in its absolute discretion elect) such goods, if practically possible, within twelve months after delivery, provided always that the Company shall not be liable to do so where the defect is caused by the purchaser's mis-use or failure to properly maintain the goods.

(b) Where the goods are manufactured by a person, firm or Company whether incorporated or un-incorporated the Company's liability hereunder will be confined to passing on to the purchaser the benefit only of any guarantee given to the Company by the manufacturer.

(c) Without Prejudice to the generality of the foregoing the Company shall give a warranty for twelve months on the goods supplied where the same is specifically requested by the purchaser and such warranty is recorded in writing in the tender or quotation or on the invoice.

### 12 SPECIFICATIONS AND DRAWINGS

Unless otherwise agreed in writing all descriptive specifications, drawings and particulars of weights and dimensions, furnished by the Company are to be deemed approximate only and the descriptions and illustrations contained in such documents are intended to represent a general idea of the product and not to form part of the contract. All drawings and designs are the copyright of the Company and therein remain the Company's property and must not be disclosed or reproduced without the Company's written authority.

### 13 PERFORMANCE

(a) Any performance figures given by the Company are subject to the recognised tolerances and rejection limits applicable thereto. Such figures are based on the Company's experience and are such as the Company expects to obtain on test. The company shall however not be under any liability if these figures are not obtained

unless the Company has specifically guaranteed them in writing

(b) The purchaser shall be solely responsible for ensuring that the performance and specification of any goods and materials supplied by the Company are suitable for their purpose.

### 14 WEEE Directive 2002/96/EC

Future WEEE

Products covered by the WEEE Directive are sold either with the company retaining the producer's obligations or with the purchaser taking responsibility. The purchaser must clearly state at the time of order which option is required and this will be noted on all relevant documentation. The purchaser agrees to disclose this agreement to any subsequent purchaser(s) of the equipment as required by the regulations.

Historic WEEE

At the time of purchasing a new cabinet the buyer may ask the company, on payment of the appropriate charge to take back a similar cabinet that was purchased before August 2007 and is therefore not WEEE marked.

### 15 WORKS DONE ON SITE

The purchaser will at his own expense provide all materials and conditions requisite to enabling the Company's program of works to be carried out on the site in the sequence planned by the Company without interruption and Without Prejudice to the generality of the foregoing, the Company is to be provided with the following facilities for its work namely:-

(a) Suitable access and possession of the site, foundations ready to receive plant on delivery, adequate crane lifting tackle and scaffolding or handling facilities and labour in lieu thereof and all other reasonable facilities which the Company's representatives may deem necessary.

(b) At all times when required adequate lighting and power and water supply.

(c) Labour for assisting with unloading or moving heavy or bulky equipment.

(d) Full insurance against fire, storm, tempest, lightning, earthquake, aircraft or anything dropped therefrom, aerial object, riot and civil commotion, burglary, theft and accidental or malicious damage to materials, equipment, plant equipment, tools and other property and work done, with suitable protection (and when requested by the Company's representative a secure enclosed space) for materials, plant, equipment, tools instruments and other property.

(e) A safe place in which the Company's employees are to work.

### 16 INFRINGEMENTS

The purchaser shall indemnify the Company against all damages, penalties, costs and expenses arising out of the infringement involved in work carried out in accordance with the purchaser's specification.

### 17 FORCE MAJEURE

If the performance by either party to this agreement is prevented, restricted or interfered with by any reason of war, (which expression shall include de facto armed hostilities unaccompanied by a formal declaration of war) revolution, civil commotion, act of public blockage, embargo or any law, order, proclamation regulation ordinance, demand or requirement having legal effect of a Government or quasi governmental authority or any other acts or occurrences whatsoever (where similar or dissimilar to the foregoing) which are beyond the reasonable control of the party affected then the party so affected, upon given notice to the other, shall be excused from such performance or from further performance to the extent of such prevention, restriction or interference. PROVIDED that the party so affected shall use its best endeavours to avoid or remove the cause of non-performance.

### 18 SEVERANCE

In the event that any provision of these conditions shall be or shall become void or unenforceable by reason of any provision of the applicable law, such provision shall be deleted and the remaining provisions shall continue in full force and effect.

### 19 CONSTRUCTION, JURISDICTION AND WAIVER

(a) The contract shall be governed in all respects by English Law, the Courts of England have exclusive jurisdiction to entertain all disputes arising under, and in relation to or in connection with the contract.

(b) No time or indulgence granted by the Company shall operate as a waiver of any of the Company's rights hereunder.

### 20 ENTIRE UNDERSTANDING

These terms and conditions together with any variation, modification, suspension or cancellation thereof, represents the entire agreement between the parties hereto. Any previous agreement relating to the subject matter hereof is cancelled. No servant or agent of the Company has authority to orally vary the said agreement or make any representation and/or warranty of behalf of the Company.

### PHOENIX RETAIL SERVICES LTD

(Standard Terms and Conditions – June 2008)