

# PLANT HANDLING LTD

## Terms & Conditions of Supply

### DEFINITIONS

- 1.1. "PHL" means Plant Handling Ltd (registered in England under number 05438341) of: 7 Union Street, Kingston-upon-Thames, Surrey, KT1 RP1, UK.
- 1.2. "Customer" means the person to whom PHL may agree to sell goods in accordance with PHL's standard conditions of sale.
- 1.3. "Conditions" means the terms and conditions set out in this document and include any document expressly incorporated by reference.
- 1.4. "Goods" means the articles or things or any of them or any part of them to be provided by PHL in accordance with PHL's standard conditions of sale.
- 1.5. "Order" an order for goods sent in writing to PHL by the Customer signed by its authorised representative.
- 1.6. "Contract" means the contract for the purchase and sale of goods.

### 2.0.THE TERMS OF THE CONTRACT

- 2.1.The terms and conditions contained herein shall govern the contract and shall apply to the exclusion of any other terms and conditions.

### 3.0.ORDERS

- 3.1.Orders from the customer must be submitted or confirmed in writing accurately stating goods description, quantities required and prices.
- 3.2.Any order placed by a customer shall constitute an offer to contract upon these conditions and no addition thereto or variation therefrom whether contained in the customer order, in any prior promise, representation, undertaking or understanding of any kind or otherwise shall apply unless expressly agreed in writing by PHL's authorised representative.
- 3.3.No order which has been accepted by PHL may be cancelled by the customer except with the written agreement of PHL and in such event the goods will be returned unused, undamaged and in their original packing and condition.

### 4.0.PRICE

- 4.1.Unless otherwise stated in PHL's quotation the price is exclusive of VAT and any other similar taxes which will be added according to prevailing legislation and are payable by the customer in addition to the price.
- 4.2.PHL reserves the right by giving notice to the customer at any time before delivery to increase the price of the goods to reflect any increased costs to PHL due to any factor beyond the control of PHL (such as, without limitation, foreign exchange fluctuations, increases in costs of labour and materials) any change in delivery dates, quantities or specifications requested by the customer.
- 4.3.PHL reserves the right to charge for any omission or additional cost arising from the provision of inaccurate, misleading or insufficient information by the customer.
- 4.4.Except as previously agreed in writing by PHL prices do not include delivery charges to the Customer and PHL reserve the right to levy a charge for delivery to any destination advised by the Customer.

### 5.0.DELIVERY

- 5.1. Goods are delivered to the Customer when PHL makes them available to the Customer or his agent at the delivery point agreed between the Customer and PHL.
- 5.2. Partial deliveries constitute separate contracts to which the conditions apply, but any delay or shortfall on a delivery will not entitle the Customer to cancel the contract or any subsequent deliveries.
- 5.3. All times stated for delivery are approximate and time shall not be of the essence.
- 5.4. PHL will not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery from any cause at all nor will any such delay or failure entitle the Customer to refuse to accept any delivery or repudiate the contract.
- 5.5. The Customer will furnish the necessary labour, if PHL requires under PHL's direction, for moving any Goods to a designated and suitably prepared operating area, unpacking it and placing it in its installation position, and the Customer will meet expenses incurred (directly or indirectly) in connection with these activities.
- 5.6. The Customer must notify PHL of any complaint regarding the Goods delivered, in writing, within 7 days of the Goods being delivered.

#### 6.0. TITLE & RISK

- 6.1. Risk in the goods shall pass to the Customer upon delivery and from such time the Customer shall keep the Goods fully protected and insured against all risks until final payment is made and title passes to the customer.
- 6.2. PHL shall retain title to the Goods until it has received payment in full of all sums due in connection with the supply of all Goods to the Customer at any time and the Customer shall hold the Goods as PHL's fiduciary agent and bailee and shall keep the goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as PHL's property. For these purposes PHL has only received payment when the amount of the payment is irrevocably credited to its bank account. PHL shall be entitled to maintain an action for the Price of the Goods notwithstanding that title in those Goods has not passed to the Customer.
- 6.3. Until such time as the property in the Goods passes to the Customer, PHL shall be entitled at any time to require the Customer to deliver up the Goods to PHL and if the Customer fails to do so forthwith to enter upon the premises of the Customer or any third party where the Goods are stored and repossess the Goods without being responsible for any damage thereby caused and without prejudice to any other remedy available to PHL.

#### 7.0. LIMITATION OF LIABILITY

- 7.1. The Customer declares that it has accepted these terms and conditions in the knowledge that PHL's liability is limited, is reflected in the price and shall accept risk and/or insure accordingly.**
- 7.2. Unless otherwise stated PHL's entire liability in respect of any cause of action by the Customer, whether based on contract, tort (including negligence), strict liability, statute or otherwise shall be limited to damage of any amount not to exceed the price.
- 7.3. PHL shall not be liable to the Customer in respect of any cause of action whether based on contract, tort (including negligence) strict liability, statute or otherwise for loss of profits, goodwill or any type of incidental, special, indirect or consequential loss whatsoever even if such loss was reasonably foreseeable or PHL had been advised of the possibility of the Customer incurring the same.

#### 8.0. WARRANTIES & LIABILITY

- 8.1. Unless otherwise notified in writing to the Customer and subject to the conditions set out below PHL warrants that the Goods will correspond with their specification at the time of delivery.
- 8.2. The above warranty is given by PHL subject to the following conditions:-
- 8.2.1. PHL shall be under no liability in respect of any defect in the Goods arising from and drawing, design or specification supplied by the Customer.
  - 8.2.2. PHL shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow PHL's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without PHL's approval.
  - 8.2.3. PHL shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
  - 8.2.4. The above warranty does not extend to parts, materials or equipment not supplied by PHL, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to PHL.
- 8.3. Subject as expressly provided in these Conditions, and except where the goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4. The customer shall not rely upon any representation concerning the goods unless the same shall have been made by PHL in writing and shall be solely and exclusively responsible for satisfying himself that the Goods are suitable for the particular application proposed by him.
- 8.5. Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to PHL within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify PHL accordingly, the Customer shall not be entitled to reject the Goods and PHL shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification is notified to PHL in accordance with these Conditions, PHL shall be entitled to replace the Goods (or the part in question) free of charge or, at PHL's discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), but PHL shall have no further liability to the Customer.
- 8.7. Except in respect of death or personal injury caused by PHL's negligence, PHL shall not be liable to the Customer by reason of any representation or any implied warranty, condition or other term, or any duty or common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of PHL, its employees or agents or otherwise) which arise out of or in connection with the supply of Goods or their use or resale by the Customer, except as expressly provided in these Conditions.

## 9.0.PAYMENT

- 9.1.Unless otherwise specifically negotiated and agreed in writing by PHL, all invoices must be settled within 30 days after issue of the invoice.
- 9.2.Without prejudice to PHL's other rights if the Customer fails to pay PHL any amount on the due date:-
- 9.3.PHL shall have the right to cancel any contract made with the Customer and/or to suspend or continue deliveries as their option.
- 9.4.PHL reserves the right to charge interest on overdue amounts at a rate of 4% above the minimum lending rate of HSBC Plc for the time being in force calculated on a daily basis from the due date until the date of payment.
- 9.5.PHL reserves the right to repossess the Goods in respect of which payment is overdue and thereafter resell the same and for this purpose the Customer hereby grants an irrevocable right and licence to PHL or its servants and agents to enter upon all or any of its premises with or without vehicles during normal business hours. Any such repossessions or sale shall be without prejudice to PHL's right to recover any balance owing to PHL from the Customer, PHL giving credit for any sums recovered on sale less all costs of repossession and sale.
- 9.6.Time is of the essence with regard to payment of sums due.

## 10.0.FORCE MAJEURE

10.1.PHL shall not be liable to the Customer or be deemed to be in breach of contract if performance of its obligations is prevented or delayed whether directly or indirectly by any cause whatsoever beyond the reasonable control of PHL, whether such cause existed or was foreseeable at the date of acceptance of the Customer's order by PHL or not. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the reasonable control of PHL.

- a) Act of God, flood, explosion, earthquake, tempest, fire or accident.
- b) War, threat of war, insurrection, sabotage, civil disturbance or requisition.
- c) Strikes or other industrial actions or trade disputes whether involving the employees of PHL or a third party.
- d) Act, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any government, parliament or local authority.
- e) Power failure or breakdown of machinery.
- f) Delays or difficulty in obtaining raw materials, labour, fuel or parts.

## 11.0.INSOLVENCY OF THE CUSTOMER

11.1 This clause applies if:

- a) The Customer makes any voluntary arrangements with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation (other than for the purposes of an amalgamation or reconstruction), or
- b) the Customer ceases or threatens to cease to carry on business, or
- c) an encumbrance takes possession or a receiver is appointed of any of the property or assets of the Customer.

11.2. If this clause applies, then without prejudice to any other remedy or right available to PHL, PHL shall be entitled to cancel the Contract or suspend any further deliveries or performance under the Contract without any liability to the Customer and the Price shall become payable immediately due and payable notwithstanding any previous arrangement or agreement to the contrary.

**12.0. ASSIGNMENT**

12.1 The customer agrees not to assign or transfer this Agreement or any of its rights herein without the prior written consent of PHL.

**13.0. SEVERABILITY**

13.1 If and to the extent that any provision or any part of the provision of PHL's standard terms and conditions is illegal, void or unenforceable for any reason then such provision or part thereof (as the case may be) shall be deemed to be severable from the remaining provisions or parts of the relevant provision (as the case may be) all of which remaining provisions shall remain in full force and effect.

**14.0. MAINTENANCE AND SUPPORT**

14.1 If the Customer purchases Hardware Maintenance and Software Support, whether from Day One or subsequently, these services are the subject of separate Terms and Conditions, copies of which are available on request.

**16.0. GOVERNING LAW**

16.1 These terms and conditions, the contract and any agreement are subject to English Law and the customer agrees to submit to the exclusive jurisdiction of the English Courts.

**T & C of Supply PHL.doc (10/01/11)**