

PLANT HOSES LIMITED

GENERAL TERMS AND CONDITIONS FOR PRODUCTS AND SERVICES (2015)

1. INTRODUCTION

- 1.1 These general terms and conditions ("**General Terms**") apply to all products and services (together "**Deliverables**") which we, Plant Hoses Limited ("**we**" or "**us**") provide to you as our client ("**you**"), which Deliverables may be more specifically set out within the relevant Order Terms.
- 1.2 Our agreement with you is made up of: (I) these General Terms; and (ii) any quotation, estimate or order form, issued by us to you about the provision of the Deliverables ("**Order Terms**"). Together the above documents, shall constitute and be known as the "**Agreement**", and apply to the contract between you and us to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.3 Any quotation given by us shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 1.4 Any order placed by you shall only be deemed to be accepted when we issue written acceptance of your order in the form of issuing the relevant Order Terms, or, if no Order Terms have been issued, otherwise provide the Deliverables to you at which point and on which date the Agreement shall come into existence ("**Commencement Date**").

2. DEFINITIONS & INTERPRETATION

- 2.1 The following terms shall have the following meanings in these General Terms:
"**Charges**" means the total charges set out within the Order Terms or otherwise agreed between the parties, to be paid in accordance with the timeframes specified in these General Terms, in return for supply of the Deliverables;
"**Confidential Information**" means in relation to either party, any or all information of a confidential nature (whether in oral, written or electronic form) including trade secrets and information of commercial value known and belonging to that party and concerning its business, suppliers, customers, products or services (including without limitation the Deliverables) and any other information which the recipient knows or is notified or has reason to believe is confidential to the disclosing party; and
"**IP Rights**" means any patents, trademarks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, knowledge, trade or business names and other similar rights or obligations whether registrable or not, in any country.
- 2.2 Words in the singular include the plural and those in the plural include the singular.
- 2.3 Any phrase introduced by the terms **including, include, or** any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.4 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

3. PROVISION OF DELIVERABLES

- 3.1 In consideration for payment by you of the Charges, we shall provide the Deliverables set out within the relevant Order Terms, or otherwise agreed between the parties.
- 3.2 We undertake that the Services will be supplied using reasonable skill and care, and performed in a good and workmanlike manner.
- 3.3 We shall use reasonable endeavours to provide the Deliverables (including delivering the Deliverables or performing the Services) within a reasonable time. However, timing of performance of our obligations under the Agreement shall not be of the essence.
- 3.4 You acknowledge that you have assessed for yourself the suitability of the Deliverables for your requirements. We do not warrant that the Deliverables will be suitable for such requirements, nor that any use of the Deliverables will be uninterrupted or error free.
- 3.5 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter and perform its duties and obligations under the Agreement and that those persons signing the Order Terms, if any, are duly authorised to bind the party for whom they sign.
- 3.6 We may, upon giving notice to you, appoint a suitably qualified sub-contractor to perform the Services on our behalf. You will continue to be liable to pay our Charges as provided in Clause 8 below, and shall not be liable directly for any of the fees of any such sub-contractor.

4. DELIVERABLES

We shall ensure that:

- 4.1 We shall deliver the Deliverables to the location set out in the Order Terms or such other location as the parties may agree ("**Delivery Location**") at any time after we notify you that the Deliverables are ready.
- 4.2 Delivery of the Deliverables shall be completed on the Deliverables' arrival at the Delivery Location. We shall not be liable for any delay in delivery of the Deliverables that is caused by your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Deliverables, or your failure to take delivery of the Deliverables.
- 4.3 We may deliver the Deliverables by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

5. TITLE AND RISK

- 5.1 The risk in any Deliverables shall pass to you on completion of delivery.
- 5.2 Title to any Deliverables shall not pass to you until we have received payment in full (in cash or cleared funds).
- 5.3 Until title to the Deliverables has passed to you, you shall: (I) hold the Deliverables on a fiduciary basis as our bailee; (ii) store the Deliverables separately from all other goods held by you so that they remain readily identifiable as our property; (iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Deliverables; (iv) maintain the Deliverables in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery; (v) notify us immediately if you become subject to any of the events listed in Clause 12.2(b); and (vi) give us such information relating to the Deliverables as we may require from time to time.
- 5.4 If, before title to the Deliverables passes to you, you become subject to any of the events listed in Clause 12.2(b) or we reasonably believe that any such event is about to happen and notify you accordingly, then without limiting any other right or remedy we may have, we may at any time require you to deliver up the Deliverables and, if you fail to do so promptly, enter your Premises or the premises of any third party where the Deliverables are stored in order to recover them and/or suspend the provision of the Deliverables.

6. YOUR OBLIGATIONS

- 6.1 We may need access to your Premises, information, tools, and resources whilst providing the Deliverables. You shall provide free access to these to the extent reasonably requested by us for the purposes of performing our obligations under the Agreement, and shall generally co-operate with us in all matters relating to the Deliverables.
- 6.2 You acknowledge that, in giving any advice about the Deliverables, we rely on the information you provide, and do not seek to establish the reliability of such information. Accordingly, you: (I) undertake to provide complete and accurate information about yourself and about anything which is or may be relevant to the Deliverables and to provide such other information as we may reasonably request; and, (ii) warrant that any such information provided is accurate and complete in all material respects, and not misleading.
- 6.3 You also agree to, to the extent necessary, prepare your Premises for the provision of the Deliverables, and to obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Deliverables are to be produced.
- 6.4 You shall also keep and maintain all materials, equipment, documents, and other property belonging to us ("**Our Materials**") at your Premises in safe custody at your own risk, maintain Our Materials in good condition until returned to us, and not dispose of or use Our Materials other than in accordance with our instructions or authorisation.
- 6.5 To the extent applicable, you acknowledge that you will retain responsibility always for compliance with all relevant laws, protocols, and regulations with respect to Deliverables delivered to you, as well as responsibility for all costs of such compliance.
- 6.6 If our performance of any of our obligations in respect of the Deliverables are prevented or delayed by any of your acts or omissions or by your failure to perform any relevant obligation ("**Your Default**") (I) we shall, without limiting our other rights or remedies, have the right to suspend provision of the Deliverables until you remedy Your Default, and to rely on Your Default to relieve us from the performance of any of our obligations to the extent Your Default prevents or delays our performance of any of our obligations; (ii) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure to perform, or delay in performing, any of our obligations where such failure or delay is attributable to Your Default; and (iii) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from Your Default.

7. DATA PROTECTION

- 7.1 You acknowledge and agree that details of your name, address, payment record and personal data will be processed by us and on our behalf about the Deliverables.
- 7.2 In this Clause 7, personal data has the meaning given in the Data Protection Act 1998.
- 7.3 If we process any personal data on your behalf when performing our obligations under the Agreement, you agree that you shall be the data controller and we shall be a data processor and in any such case: (I) you shall ensure that you are entitled to transfer the relevant personal data to us so that we may lawfully use, process and transfer the personal data in accordance with the Agreement on your behalf; (ii) you shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; (iii) you shall process the personal data only in accordance with the terms of the Agreement and any lawful instructions reasonably given by us from time to time; and (iv) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

8. CHARGES

- 8.1 The Charges set out within the Order Terms apply only to the provision of the Deliverables set out within Order Terms.
- 8.2 We reserve the right to alter our prevailing standard rates at any time, including during the term of our Agreement with you. However, where such a change to our standard rates is to be applied, we shall use best endeavours to provide you with at least 1 weeks' prior notice, either orally or in writing.
- 8.3 We shall invoice you for the Charges specified in the Order Terms or otherwise provided for under the Agreement, in respect of Deliverables, on or at any time after completion of delivery. You must pay all undisputed Charges set out within each invoice in full and cleared funds within 30 calendar days of the date of the invoice. Time for payment shall be of the essence of the Agreement.
- 8.4 Where you dispute any invoice, you shall notify us immediately in writing. We agree to provide all such evidence as may be reasonably necessary to verify the disputed invoice, and the parties shall negotiate in good faith to attempt to resolve the dispute promptly. We reserve the right not to supply any further Deliverables to you while such a dispute is ongoing. Where only part of an invoice is disputed, you shall pay the undisputed amount on the due date for payment as set out within Clause 8.3 (or otherwise provided for in the relevant Order Terms). If the parties have not resolved the dispute within 30 days of you providing us with notice that you dispute the relevant invoice, we reserve the right to terminate the Agreement, whereupon all Charges payable under the Agreement shall become immediately due and payable.
- 8.5 Payments due under the Agreement shall be made in pounds' sterling.
- 8.6 All sums payable under the Agreement are exclusive of VAT and any other sales or similar taxes, custom duties, withholding taxes or similar charges, for which you shall be responsible.
- 8.7 You shall have no right to any refund of the Charges paid or payable under the Agreement including, without limitation, on the termination of the Agreement.
- 8.8 Interest shall be chargeable on any Charges overdue at the rate of 5% above the base rate of Santander Bank as applying from time to time to run from the due date for payment until receipt by us of the full amount due whether after judgement and without prejudice to any of our other rights or remedies.
- 8.9 All Charges due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to you by us against any amount payable by us to you.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 Any IP Rights which the relevant party to this Agreement can demonstrate are already held by it at the date of the Agreement or which at any time after the date of this Agreement have been acquired or developed by it independently of the provision of the Deliverables, and of the use of any Confidential Information of the other party, and all modifications thereto and derivative versions thereof created at any time ("**Background IP**") shall remain the sole property of that party.

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- 9.2** You hereby grant to us a royalty-free, non-exclusive, non-transferable licence to use your Background IP, if any, as required to allow us to perform our obligations under the Agreement.
- 9.3** You acknowledge that, in respect of any third-party IP Rights in the Deliverables, your use of any such IP Rights is conditional on our obtaining a written licence from the relevant licensor on such terms as will entitle us to license such rights to you.
- 9.4** Any IP Rights, other than Background IP, created or developed by us during provision of the Deliverables ("**Foreground IP**") shall be our sole property.

10. AMENDMENTS TO THESE TERMS

- 10.1** We may, acting in our sole discretion, amend these General Terms from time to time.
- 10.2** Every time we supply Deliverables to you, the terms applying to the Agreement between you and us for the provision of the Deliverables, shall be as outlined in the relevant Order Terms, and as outlined in the version of these General Terms in force at the time of the signing or issuing of the relevant Order Terms.

11. LIMITATION OF LIABILITY

- 11.1** Nothing in the Agreement shall exclude or limit our liability for: (i) death or personal injury caused by our negligence, or the negligence of our employees, agents, or subcontractors; (ii) fraud or fraudulent misrepresentation; or (iii) for any other liability which cannot be excluded or limited under applicable law.
- 11.2** Subject to Clauses 11.1 and 11.3, our total liability arising out of or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed a total aggregate amount equal to 100% of the Charges paid to us pursuant to the Agreement.
- 11.3** Subject to Clause 11.1, we shall not in any circumstances be liable to you, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, loss of contracts, loss of business or business opportunities, loss of production, loss of turnover or revenue, loss of availability, any loss or corruption (whether direct or indirect) of data or information provided by you, loss of anticipated savings, wasted expenditure, loss of reputation, loss of goodwill or loss of use suffered or incurred directly or indirectly by you, or for any consequential, indirect or special loss or damage howsoever arising and of whatsoever nature (even if we had been advised of the possibility of you incurring the same) or any punitive or exemplary damages.
- 11.4** Subject to Clause 11.1, the express terms of this Agreement shall apply in place of all warranties, conditions, terms, representations, statements, undertakings, and obligations whether expressed or implied by law, custom or otherwise, all of which are excluded fully permitted by law.
- 11.5** We shall have no liability to you to the extent that such liability would not have arisen but for Your Default.

11.6 Product Warranty and Conditions of Sale

Plant Hoses Ltd warrants to the purchaser that products sold will be free from defects in material and workmanship for the warranty period of 1 years from the date of manufacture or product supply.

If the customer/buyer claims that the product supplied is in any way faulty Plant Hoses Ltd upon written notice under the procedure below will either examine the product at an agreed location of issue instructions for the return to Plant Hoses Ltd at the buyer's expense, prepaid.

Any claim should be notified in writing to the supplier within a set period, 5 days from the knowledge of the reported defect and justified through this process, only on the receipt of this can action be taken. The customer should return all products related to this claim to save any future inconvenience.

Plant Hoses Ltd sole obligation under its warranty will be at its option to repair, replace or refund the price of any product which is proven to be verified under the claim procedure. Plant Hoses Ltd will in no circumstances be held responsible for special, accidental, or consequential damage such as, loss of turnover, loss of production having to shut down machinery, or loss of products and similar.

Plant Hoses Ltd UK Ltd does not cover any faults caused by normal deterioration, accelerated deterioration caused by special physical, chemical or electrochemical conditions, insufficient maintenance or incorrect repair, failure to follow BS5244 storage, user and operating instructions, use of unsuitable materials, the effects of a chemical or electrolyte process, assembly operations not carried out using suppliers products or manufacturing instructions or any other faults arising as a result of circumstances over which the supplier has no control.

At its option, Plant Hoses, Ltd will compensate for any possible defects arising in materials or manufacture of its products. Complaints arising from obvious shortages as well as deviations in quantities can only be considered, if they have been noted immediately on receipt of the goods and directly on the despatch documentation of the carrier and have been validly lodged with Plant Hoses Ltd within not more than three working days.

Liability

Plant Hoses Ltd is liable for its own faults and for that of other parties employed in performing its obligations, but not in the case of minor negligence and only the terms expressed in this warranty shall apply.

Therefore, as stated we accept no liability as far as legally permissible and Plant Hoses Ltd expressly refuses all other warranties including the implied warranty of merchantability and the implied warranty of fitness for a purpose.

This warranty constitutes part of our General Sales Conditions.

12. TERM AND TERMINATION

- 12.1** The Agreement shall come into effect upon the Commencement Date, and, subject to other terms of the Agreement, shall continue in force until we cease providing Deliverables to you and all outstanding Charges owing to us by you have been paid in full, or the termination of the Agreement in accordance with its provisions, whichever is sooner.

- 12.2** Without prejudice to any other rights to which it may be entitled, either party may give notice in writing to the other terminating the Agreement with immediate effect if: (a) the other party commits any material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 calendar days of that party being notified of the breach; (b) a petition is filed, an order is made, or a resolution is passed for the winding up or bankruptcy of the other party or if an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or if such an administrator is appointed or if documents are filed with the Court for the appointment of an administrator or if notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying charge holder, or if a receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order or if the other party takes or suffers any similar or analogous action in consequence of its indebtedness; or (c) a party ceases, or threatens to cease, to trade.

13. EFFECTS OF TERMINATION

- 13.1** Termination of the Agreement shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 13.2** Upon termination, you shall, at our request, promptly return to us or otherwise dispose of as we may instruct any Confidential Information which you may have in your possession or under your control and pay to us all outstanding Charges, including interest, due under the terms of the Agreement.

14. GENERAL

- 14.1 Confidentiality:** Each party shall maintain the confidentiality of the other party's Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy, or modify the other party's Confidential Information (or permit others to do so) other than as strictly necessary for the performance of its rights and obligations under the Agreement. The provisions of this Clause 14.1 shall not apply to any information which: (a) is or comes into the public domain without breach of the Agreement; or (b) was in the possession of the receiving party prior to receipt from the other party without an obligation of confidence; (c) was obtained from a third party free to divulge such information; or (d) is required by law to be disclosed to any person who is authorised by law to receive the same (after consultation, if practicable, with the other party). Each party shall notify the other party if it becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, about any enforcement proceedings which that other party may elect to bring against any person.
- 14.2 No Assignment or Sub-Licensing:** You may not assign, sub-license, sub-contract, mortgage or otherwise transfer, dispose, or otherwise deal with the Agreement or any of your rights or obligations under it without our prior written consent, such consent not to be unreasonably withheld or delayed. We shall notify you of any assignment or sub-contracting of our rights and obligations hereunder.
- 14.3 Force Majeure:** Neither party shall be liable to the other party for any delay or failure to perform its obligations under the Agreement to the extent and for so long as such delay or failure results from circumstances beyond its reasonable control (an "**Event of Force Majeure**") if it notifies the other party within 5 Business Days of becoming aware of such event. If any Event of Force Majeure continues for a period exceeding 3 months, either party shall have a right to terminate the Agreement on 30 calendar days' written notice to the other party.
- 14.4 Waiver:** The failure of either party to enforce or to exercise any term of the Agreement does not constitute a waiver of such term and shall in no way affect that party's right to later enforce or to exercise it.
- 14.5 Severability:** The invalidity or unenforceability of any term of, or any right arising pursuant to, the Agreement shall not affect the validity or enforceability of the remaining terms or rights.
- 14.6 Entire Agreement:** The Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between them whether oral or in writing. Any samples, drawings, descriptive matter, or advertising issued by us and any illustrations or descriptions of the Deliverables contained on our website or in our advertising material are issued or published for the sole purpose of giving an approximate idea of the Deliverables described in them. They shall not form part of the Agreement or have any contractual force.
- 14.7 Survival:** The terms of Clauses 1, 2, 6.4, 8.8, 8.9, 10, 11, 0, 13 and 14 shall survive expiry, variation or termination of the Agreement.
- 14.8 Independent Contractors:** The relationship of the parties is that of independent contractors dealing at arms' length.
- 14.9 Governing Law:** The construction, validity and performance of the Agreement shall be governed by the laws of Northern Ireland and the parties irrevocably submit to the exclusive authority of the courts of Northern Ireland.
- 14.10 Remedies:** Except as herein expressly provided otherwise, the rights and remedies provided in the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.11 Non-Solicitation:** From the Commencement Date, and for a period of 12 months from the termination of the Agreement, neither party shall (except with the prior written consent of the other) solicit the employment of any person who is employed by the other party during providing the Deliverables, other than by means of a general advertising campaign open to all comers and not specifically targeted at any of the employees of the other party.
- 14.12 Publicity:** The provisions of Clause 14.1 notwithstanding, we reserve the right to publicise the fact of this Agreement, your identity, and details concerning the nature of the Deliverables provided to you for, inter alia, marketing and promotional purposes.