

PHS Compliance PO terms and conditions of Contract

1 DEFINITION AND INTERPRETATION

1.1 In these conditions:

"**Confidential Information**" means all information (contained in any form or media) of a confidential nature disclosed by a party, its employees, agents, consultants or subcontractors to the other, including but not limited to all technical or commercial knowhow, specifications, inventions, processes or initiatives;

"**Contract**" means the contract between you and us for the purchase by you, and supply by us, of the Goods and/or Services in accordance with these conditions;

"**Documents**" means any and all drawings (including schematics), illustrations, specifications, plans, reports, brochures, guides, promotional materials or other literature prepared by us or on our behalf;

"**Goods**" means any goods supplied by us as part of the Services;

"**IP**" means any patents, patent applications, trade marks or trading names (in each case, whether or not registered), trade mark applications, know-how, design rights registered or unregistered (including registered design applications), confidential information, copyright, database rights and all other intellectual property rights including any rights analogous to the same subsisting anywhere in the world at any time;

"**Order Acceptance**" means our written notice of acceptance of your purchase order;

"**Portal**" means our on-line portal which we may grant you access to;

"**Premises**" means the premises identified in the Order Acceptance where the Goods and/or Services are provided;

"**Quotation**" means our quotation or agreed pricing, both of which must be in writing, for the Goods and/or Services to be provided by us to you;

"**Services**" means the services we supply to you including the provision or installation of any Goods, as applicable;

"**Working Day**" means Monday to Friday 08:30-17:00 (inclusive) excluding Bank Holidays;

"**We**", "**Our**" and "**Us**" are references to PHS Compliance Limited (company number 03811260); and

"**You**" and "**Your**" are references to the party receiving the Goods and/or Services.

1.2 The term "written" or "in writing" shall include facsimile transmissions and emails from, or containing the signature of, an authorised representative.

1.3 Words importing the masculine gender include the feminine and words importing the feminine include the masculine. Words in the singular include the plural and vice versa.

1.4 References to any statutes or statutory regulations shall be deemed to include any subsequent revisions or re-enactments thereof.

1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.6 A reference to a party includes its personal representatives, successors or permitted assigns.

1.7 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. BASIS OF CONTRACT

2.1 These conditions shall apply to all Goods and/or Services provided by us and are incorporated in the Contract. The Contract shall replace any ongoing arrangement made between you and us and shall prevail over any terms or conditions contained in, or referred to in, your purchase order or other correspondence or elsewhere or implied by trade, custom, practice or course of dealing. In no circumstances will any conditions of purchase submitted at any time by you be applied to the Contract and any failure by us to challenge any such terms and conditions does not imply acceptance of those terms and conditions.

2.2 Any Quotation given by us shall not constitute an offer and is only valid for a period of 30 Working Days from date of issue (unless we agree otherwise in writing) and we shall be entitled to vary or withdraw a Quotation at our discretion after that time.

2.3 Your purchase order is an offer by you to purchase Goods and/or Services from us in accordance with these conditions. All purchase orders must be in writing and include the relevant Quotation or unique reference number.

2.4 Your purchase order shall only be accepted by us when we issue our Order Acceptance. The Contract shall come into existence on the date of our Order Acceptance or, if earlier, when we commence provision of the Services ("**Commencement Date**").

2.5 Any reactive or essential Services you require us to provide including those outside of a Working Day and/or in addition to those specified in your purchase order are subject always to these conditions and you acknowledge and agree that:

2.5.1 You shall issue a new purchase order no later than the first Working Day following the initial request for a call-out or delivery of additional services (whichever is applicable), and we shall issue an Order Acceptance as soon as possible thereafter; and

2.5.2 Prior to issue of your purchase order and in any event: (a) your email to us confirming the reactive or essential services required; or (b) a purchase order uplift approved by your representative at the Premises, shall be deemed approval for us to proceed; and

2.5.3 Clause 4.4 shall apply.

2.6 In the event of any conflict between any terms contained in the Quotation, Order Acceptance and these conditions the following order of precedence shall apply to the extent of any inconsistency:-

2.6.1 Order Acceptance;

2.6.2 Quotation;

2.6.3 these conditions.

3. GOODS AND SERVICES

3.1 We shall supply the Services to you using all reasonable skill, care and diligence to the standards of a reasonably qualified and competent provider of the Services.

3.2 Where required, we may have to make changes to the Services or substitute the Goods with similar goods of another manufacturer, which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods and/or Services. Before we do this, we shall notify you of the relevant changes and any consequent amendment to the Charges.

3.3 You acknowledge and agree that we may take any action necessary, if in our reasonable opinion, an appliance and/or system is likely to be life threatening or poses an immediate danger. This may include isolating an appliance or system, contacting the emergency services and/or national gas authorities. We shall have no liability if you do not follow our recommended course of action(s).

4. CHARGES AND PAYMENT

4.1 Subject to this section 4, the charges for the Services shall be set out in the Quotation, (if no Quotation is provided, this will be our standard list price in force at the Commencement Date) or if clause 2.5 applies, our invoice (which shall be based on our service rate as notified to you prior to commencing reactive or additional works) ("**Charges**").

4.2 Notwithstanding any other terms of this Contract we may withhold or suspend the provision of the Services and remove your access to the Portal (in addition to any other remedy available to us) without terminating the Contract if you fail to pay our invoices in accordance with the Contract.

4.3 Unless agreed otherwise in writing, we reserve the right at any time (whether before or after issue of the Order Acceptance) to:

4.3.1 pass onto you any increased or additional costs to us as a result of (a) changes in law; (b) clauses 3.3 or 9.5; (c) our engineers being required to travel or provide services outside of a Working Day; (d) increase in prices charged to us by our suppliers; (e) excessive movement of materials, hire of scaffolding or any other additional costs caused by circumstances not specified in our Quotation (where the Quotation includes a charge for erection and installation, such charges are based on the assumption that sites are clean and level and offer reasonable access); and

4.3.2 apply additional charges (a) where our engineers are refused or unable to gain access to the Premises (failed or abortive visit); or (b) in the event you cancel a scheduled visit by giving us less than 72 hours' notice.

4.4 If clause 2.5 applies, you acknowledge and agree that:

4.4.1 you shall pay the applicable Charges in accordance with this Contract; and

4.4.2 where a new purchase order is not issued by you in accordance with clause 2.5.1, then such Services will be an extension of your original purchase order and clause 2.5.2(a) or (b) is deemed approval of such extension.

4.5 Unless you have an approved credit account with us, payment in full must be made in advance of delivery of any Goods or the performance of any Services. You shall pay the Charges specified in any invoice within 30 days of the date of such invoice (unless we agree otherwise in writing) in pounds sterling by BACS transfer into our account as notified in writing by us from time to time. Cheque payments shall be remitted to PHS Compliance Ltd at Golborne Enterprise Park, Kid Glove Road, Warrington, Cheshire, WA3 3GR. All Charges are net of Value Added Tax (VAT) which you shall pay at the prevailing rate upon receipt of a valid VAT invoice.

4.6 Where you maintain a credit account, payment for Goods and/or Services supplied shall become due upon substantial completion of the Services or upon presentation of an invoice by us.

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- 4.7 All payments to be made by you under the Contract will be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim.

5 YOUR OBLIGATIONS

- 5.1 You shall:
- 5.1.1 promptly provide any resources, information, documentation and access required to enable us and our agents to provide the Services;
 - 5.1.2 ensure we have full and safe access to the Premises and access at all times to a member of your staff familiar with the Premises and its safety procedures;
 - 5.1.3 ensure all information provided to us is accurate and none of it infringes the IP of any person and you shall indemnify and keep us indemnified against any and all claims which may arise from our use of such information;
 - 5.1.4 comply with all statutory requirements (including relating to health and safety) which apply to the Premises ;
 - 5.1.5 wherever possible, provide a suitable vehicle parking facility for use by our personnel which is free from any legal restrictions and immediately close to the location at which the Goods are to be supplied or installed and/or Services provided;
 - 5.1.6 promptly inform us of any facts or opinions of which you become aware which are likely to affect our obligations under the Contract or lead to an increase in our costs or the Charges; and
 - 5.1.7 ensure we have access to your authorised representative at all times, as required to approve additional works under clause 2.5.
- 5.2 You acknowledge that the provision of the Services by us will not absolve you from any obligation, including any statutory obligation, to which it may from time to time be subject.
- 5.3 You accept that we shall be entitled to announce (either verbally or in writing) for marketing purposes only that we have undertaken the Services for you.
- 5.4 You consent (and shall procure that any data subject consents) to us making such information available to any company in the same group of companies as us, for the purpose of marketing other goods and services offered by such companies.
- 5.5 In the event that you fail to notify us of any problem or concern within 24 hours of us carrying out the Services then you will be deemed to have accepted the same.
- 5.6 If you are given access to our Portal , you shall and shall procure that any person who has been issued with a password and authorised to have access to the Portal (“**Authorised Users**”):
- 5.6.1 use the Portal only in accordance with our instructions and/or terms of use and shall ensure that no modifications are made to the Portal; and
 - 5.6.2 maintain an up to date list of your Authorised Users and supply this to us promptly upon request.
- 5.7 When using the Portal, you and Authorised Users shall comply with generally accepted principles of internet usage and ensure that:
- 5.7.1 it is not used by any of the your Authorised Users fraudulently, in connection with any criminal offence, or otherwise unlawfully or to send or receive any information or material which is offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy or any other rights, or to send or provide unsolicited advertising or promotional material; and
 - 5.7.2 no viruses are introduced into the Portal and that, if a virus is found, promptly upon its discovery eliminate it and/or ameliorate its effect.
- 5.8 You acknowledge and accept that we may be required by law to monitor website content and traffic and, if necessary, give evidence of the same together with use of log-on identification to support or defend any dispute or actionable cause.

6 RISK AND RESERVATION OF TITLE

- 6.1 Subject to clause 8.2, title to and property in the Portal shall remain vested in us at all times.
- 6.2 Notwithstanding installation or delivery of the Goods, title to and property in such Goods shall pass to you only upon payment in full of the relevant Charges, together with interest (if any) thereon and all other sums (if any) due to us, of whatever nature and whether arising out of this Contract or any other contract between us and you, and until we have received such payments in full:
- 6.2.1 you shall hold the Goods as our fiduciary agent and bailee and shall, wherever possible, keep the Goods separate from your equipment and property and/or that of any third parties and properly stored, protected and, unless agreed otherwise, insured against all risks;
 - 6.2.2 we shall be entitled to take possession of the Goods for which we retain title and/or remove access to the Portal at any time and we and/or our agents and/or representatives shall be entitled at any time and without

notice to enter upon any Premises or other premises at which the Goods are stored or kept or reasonably believed so to be;

- 6.2.3 you agree and acknowledge that any of our plant, tools or other equipment left at the your premises for the purposes of carrying out the installation of the Goods, and all Goods delivered to your Premises in advance of installation work shall, upon delivery, be your responsibility and at your risk; and
- 6.2.4 until title passes to you upon full payment, you shall not be entitled to sell or charge any of the Goods by way of security for any of your indebtedness or otherwise.

7 CONFIDENTIAL INFORMATION

- 7.1 Each party shall keep in strict confidence and treat the other party's Confidential Information as confidential and to use it only for the purposes of the Contract except in so far as may be necessary for the performance of any obligations of the Contract or to the extent that such information is generally available to the public or to the extent that disclosure of information is required to be made by law.
- 7.2 Each party agrees that this obligation shall continue in force without limitation in point of time notwithstanding the termination or expiry of any Contract for any reason but shall cease to apply to information from the point at which it enters into the public domain and information which is received independently from another source without the imposition of any duty of confidence.

8 INTELLECTUAL PROPERTY

- 8.1 We shall retain all IP relating to the Services and in any and all Documents, the Portal, any other systems, methods, material and items created by us or on our behalf, whether specifically for the purposes of this Contract or otherwise, except for the content of any test condition reports.
- 8.2 Parts of the Portal are owned by a third party licensor who shall retain all IP relating to those parts of the Portal.
- 8.3 You acknowledge that we shall have no liability for any misuse by you or on your behalf or any other person, of any of the Documents or any other deliverables generated during the provision of the Services.
- 8.4 You grant us a royalty-free, non-exclusive and irrevocable licence to copy and use any material provided by you for all reasonable purposes related to the Services. You shall not use the Portal, Documents, or any deliverables resulting from the Services for any purpose whatsoever other than as necessary to receive the Services.

9 LIMITATION OF LIABILITY AND REMEDIES

- 9.1 Subject to clauses 9.2 and 9.3, our maximum total liability under or arising out of or in connection with the Contract will not exceed the sum which is the lesser of £1,000,000 (one million pounds) or twice the total value of the Charges paid by you in the year during which the claim arose or such pro-rated amount should the claim arise in the first year of trading.
- 9.2 Subject to Clause 9.3, we shall not in any circumstances have any liability (whether direct or indirect) for:
- 9.2.1 loss of business or business opportunity;
 - 9.2.2 pure economic loss (including but not limited to loss of revenue or loss of profits;
 - 9.2.3 loss of anticipated savings;
 - 9.2.4 loss of or damage to data;
 - 9.2.5 loss of goodwill or injury to reputation;
 - 9.2.6 loss which could have been avoided by the you through reasonable conduct or by you taking reasonable precautions; or
 - 9.2.7 any consequential or indirect loss.
- 9.3 Nothing in this Contract seeks to exclude or limit our liability for death or personal injury caused by our negligence or for our fraudulent misrepresentation.
- 9.4 You hereby acknowledge and agree that the limitations of liability referred to in clause 9.1 and 9.2 are fair and reasonable and reflected in the level of the Charges having full regard to the extent of our responsibility for any loss or damage suffered.
- 9.5 Without prejudice to any other terms of this Contract, we shall not be liable under any circumstances for any delay, error or problem caused as a result of following your instructions or any of your acts or omissions, or those of your agents or employees. We may levy additional charges (at our then current standard rates) resulting from any additional work or additional costs incurred or undertaken as a consequence of any such act or omission.
- 9.6 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 and sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.7 Save as required by law, your exclusive remedy for any default or defect in the performance of the Services or the supply or installation of the Goods or any other breach of the Contract by us shall be to require us to:

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- 9.7.1 correct and/or re-perform any such defective Services; or
- 9.7.2 at our option, repair or replace the defective Goods; or
- 9.7.3 where, in our sole discretion, if it is not economical or technically feasible for us to repair, replace, correct and/or re-perform the defect then you shall be entitled to a full or partial credit of sums paid for the Goods or Service(s) alleged to be defective (subject always to the other provisions of this clause 9).

9.8 Clause 9.7 shall apply provided:

- 9.8.1 you have promptly notified us of the default or defect, and in any event within 12 months' of performance of the affected Services, or delivery or installation of the affected Goods; and
- 9.8.2 the defect has not arisen as a result of: (a) you failing to follow our oral or written instructions as to the use and maintenance of the Goods; (b) us following any drawing, design or specification supplied by you; or (c) fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

9.9 We shall pass onto you the benefit of any manufacturers' guarantees which we may have received from the supplier of such Goods.

10 FORCE MAJEURE

We shall have no liability to you if we are prevented from, or delayed in performing, our obligations under the Contract or from carrying on our business by any event(s) or combination of events where such event(s) arises from, or is attributable to acts, events, omissions or accidents beyond our reasonable control including, but not limited to, acts of God, terrorism, war or flood.

11 TERMINATION

- 11.1 We may terminate any Contract (or part thereof) forthwith without any liability to you by written notice if you:
 - 11.1.1 are in material breach of the Contract which breach is not capable of remedy or, if capable of remedy, is not remedied within 14 days of us specifying the breach and requiring its remedy; or
 - 11.1.2 fail to make any payment in accordance with the terms of the Contract; or
 - 11.1.3 fail to comply with clauses 13.7 or 13.8.
- 11.2 Either party may terminate the Contract forthwith by written notice to the other if the other party:
 - 11.2.1 has had a trustee, receiver, administrative receiver or similar official appointed over a material part of its business or assets; or an order has been made or a resolution passed for the its winding up (otherwise than for the purpose of a bona fide scheme of arrangement or solvent amalgamation or reconstruction) or an administration order has been made; or a proposal has been made in respect of it for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or for any other composition scheme of arrangement with (or assignment for the benefit of) its creditors; or it ceases to trade or is unable to pay its debts as and when they fall due; or any other analogous event occurs in any other jurisdiction; or
 - 11.2.2 ceases or threatens to cease trading.
- 11.3 Upon termination of any Contract howsoever occurring:-
 - 11.3.1 we shall be entitled to take possession of any of the any Goods not paid for in full and we, our agents and/or representatives shall be entitled at any time and without notice to enter upon any premises in which the Goods are stored or kept or reasonably believed so to be;
 - 11.3.2 your right to access and/or use the Portal shall cease immediately;
 - 11.3.3 you shall return or dispose any of our Confidential Information and all copies thereof in accordance with our instructions; and
 - 11.3.4 you shall remain liable to pay us any Charges outstanding and for any Services or proportion of Services already performed and/or any Goods supplied and installed, prior to the date of termination.
- 11.4 Termination of this Contract for any reason shall be without prejudice to any rights of either party which may have accrued up to the date of termination.
- 11.5 Clauses 1, 4, 6, 7, 8, 9, 11.3, 11.4 and 13 shall survive termination.

12 DISPUTE RESOLUTION

- 12.1 We shall attempt in good faith to negotiate a settlement to any dispute between us arising out of or in connection with this Contract within 20 Working Days of either party notifying the other of the dispute. This includes escalation of the dispute to a senior member of your and our organisations.
- 12.2 If we fail to reach agreement within 25 Working Days of such referral to senior members of staff, or such longer period as may be agreed between us, then any dispute or difference may be referred to the Courts.

13 MISCELLANEOUS

- 13.1 This Contract contains the entire understanding between the parties in connection with the matters herein contained and supersedes any previous agreements or undertakings (whether written, oral or implied). The parties acknowledge that in entering into any Contract neither has relied on any oral or written representation or undertaking by the other except as expressly incorporated in any Contract.
- 13.2 If we waive any right under this Contract or any failure to perform or breach by you, it shall not constitute or be deemed to be a waiver of any other or future right or of any other failure to perform or breach, whether of a similar or dissimilar nature.
- 13.3 No variation of the Contract shall be valid unless it is in writing and signed (which includes electronic signatures) by or on behalf of a duly authorised representative of each of the parties.
- 13.4 For the purposes of this Contract, we shall be an independent contractor, and neither we, our sub-contractors, directors nor employees, shall be deemed to be an employee or agent of or a partner with you.
- 13.5 You shall not assign the Contract in whole or in part without our prior approval (such approval not to be unreasonably withheld or delayed).
- 13.6 A person who is not a party to the Contract shall not have any rights under the Contracts Rights of Third Parties) Act 1999 or otherwise, to enforce any part of it.
- 13.7 You shall comply, and shall ensure that each of your subcontractors, agents and personnel comply with any relevant and applicable anti-bribery and corruption laws, the Modern Slavery Act 2015 and any other similar laws, regulations and/or directives related to the provision and receipt of the Services.
- 13.8 You warrant and represent to us that you have not and shall not, in connection with the Services contemplated by any Contract or in connection with any other business transactions involving us, make, promise or offer to make any payment or transfer of anything of value, directly or indirectly: (a) to any government official (as defined below) or to an intermediary for payment to any government official, or (b) to any political party for the purpose of influencing any act or decision of such official or securing an improper advantage to assist us in obtaining or retaining business. It is the intent of the parties that no payments or transfers of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business.
- 13.9 You agree that you will not at any time during provision of the Services or for 6 months thereafter, without our prior written consent, directly or indirectly solicit, induce or entice away from us or employ, engage or appoint in any way cause to be employed, engaged or appointed any of our employees, agents or sub-contractors to perform services substantially similar to the Services.
- 13.10 Any notice under the Contract must be given in writing to the addresses set out in the Quotation and if no address is given, the registered office of such party. Any such notices shall be effective if delivered by hand, at the time of delivery, if sent by fax, on the first Working Day after sending and if sent by post, 2 days after the date of posting.
- 13.11 Each provision of this Contract is severable and distinct from the others and if any provision is or at any time becomes to any extent or in any circumstances invalid, illegal or unenforceable for any reason, it shall to that extent or in those circumstances be deemed not to form part of this Contract, but the validity, legality and enforceability of all other provision of this Contract shall not otherwise be affected or impaired, it being the parties intention that every provision of this Contract shall be and remain valid and enforceable to the fullest extent permitted by law.
- 13.12 This Contract and any disputes shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.