

STANDARD TERMS AND CONDITIONS FOR SUPPLY OF SERVICES AND MATERIALS OF HORNBILL ENGINEERING LIMITED

General

These Terms and Conditions of Sale and Supply for Hornbill Engineering Limited (hereinafter referred to as “Hornbill”) are an integral component of contracts with their commercial Customers.

A contract generally comes into being as a result of a written confirmation of acceptance of quote or receipt of Order by Hornbill.

The Customer’s General Terms and Conditions of business shall only become part of the contract with Hornbill’s express written consent.

1. Definitions

In this document the following works shall have the following meanings:

- 1.1 **“Agreement”** means these Terms and Conditions together with the terms of any applicable Service Specification;
- 1.2 **“Customer”** means the organisation, business or person who purchases services and or materials from the supplier;
- 1.3 **“Intellectual Property Rights”** means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 **“Supplier”** means Hornbill Engineering Limited of:
Darcy Business Park, Llandarcy, Neath, SA13 6EJ;
Fieldway, Denbigh Road, Mold, Flintshire, CH7 1BP;
Captain Superintendents House, The Royal Dockyard, Pembroke Dock, Pembrokeshire, SA72 6TD
or any operational site offices;
- 1.5 **“Company Representative”** means a corporate officer or authorised employee of the Company;
- 1.6 **“Goods”** means any products or physical items that can transfer ownership or possession;
- 1.7 **“Services”** means any work undertaken for intangible products that are not goods and do not have a physical existence. There is no transfer of possession or ownership, but comes into existence and the time of order;
- 1.8 **“Time & Materials”** means dayworks based on actual time and materials used specifically for one project at any time recorded on daywork sheets and billed in accordance with agreed rates and percentage mark-up;
- 1.9 **“Schedule of rates”** means rates agreed for a specific project detailing working hours and overtime etc;
- 1.10 **“Travel and subsistence”** means rates charged for working away;
- 1.11 **“Written instruction”** means instruction issued by means of either e-mail or pre paid, first class recorded mail or hand delivery;
- 1.12 **“Variation instruction”** means a written variation to an already agreed scope of works;

- 1.13 **“Fixed Price”** means works detailed and agreed to be carried out at an agreed price with will not change unless a variation is instructed. This is subject to clause 8.2
- 1.14 **“Service Specification”** means a statement of work, quotation or other similar document describing the services to be provided by the Supplier;
- 1.15 **“Bespoke Order”** means orders for Goods and/or Services which are custom made, perishable or services provided expressly to the Customer and cannot be resold;
- 1.16 **“Dispute Resolution Policy”** means the method of notifying, investigating and responding to complaints;
- 1.17 **“Privacy Policy”** means the way in which third party information is stored and used in accordance with the Data Protection Act;
- 1.18 **“Company IQES Policy”** means the Company’s Integrated Quality, Environment and Safety policy set out in Appendix A – page 6.
- 1.19 **“Guarantee”** means the assurance of specified quality, content and that the performance will be satisfactory for a given length of time.
- 1.20 **“Warranty”** means an assurance that specific services and/or goods supplied will be satisfactory, if they are not satisfactory, the Customer will be entitled to seek some type of remedy
- 1.21 **“Durability”** means the capability of goods to withstand anticipated wear and tear; and the ability to perform over a long period.
- 1.22 **“Snagging”** means and works that are deemed to be unacceptable by the Customer and require rectification prior to works being authorised as complete.
- 1.23 **“Site”** means the locations(s) in respect of a particular project / job, at which the relevant Worker is required to work for the Customer, as set out in the Quotation or otherwise agreed in writing from time to time by the Supplier and Customer;
- 1.24 **“Worker”** means an individual supplied by the Supplier to work for the Customer pursuant to this contract (regardless of the nature of the individual’s relationship with the Supplier);
- 1.25 **“Quotation”** means document issued by the Supplier to the Customer to confirm the following items but not limited to:
- Name of Customer & Contact Person;
 - Description of Assignment / Job;
 - Supplier Specific Job number / Reference (this number is to be quoted on all correspondence);
 - Reference Documents;
 - Scope of Work;
 - Clarifications;
 - Cost;
 - Delivery;
 - Terms;
 - Contact Details.

2. Parties to the contract

- 2.1 The User and the Customer agree to be bound by these terms and conditions.
- 2.2 A contract of completion for and order will be assumed between the Company and the Customer upon receipt of the whole of the price of Goods and/or Services ordered by the Customer. This acceptance of the order brings into existence a legally binding agreement between the Company and the Customer.
- 2.3 Where the Customer is more than one legal person, each party shall be jointly and severally liable under this agreement.

3. Price

- 3.1 In the absence of an express agreement to the contrary, prices are made ex Hornbill including packaging and without freight/delivery costs.
- 3.2 If the delivery time exceeds two months, the Supplier reserves the right to increase the agreed price to the extent that our costs increase (e.g. increase of raw materials, payroll costs, transport, taxes, insurances etc.).
- 3.3 All prices quoted shall be in Pound Stirling, ex works, excluding VAT at the statutory rate.
- 3.4 The prices of earlier or current orders shall not be binding for the purpose of subsequent orders.
- 3.5 Payments shall be made without deduction, in legal tender, within 30 days of the invoice date (i.e. January invoice = end of February payment). If payment is delayed or deferred, interest for delay shall be claimed at the statutory rate.
- 3.6 Invoices not received by the end of the month, will fall into the next payment run, unless otherwise agreed.
- 3.7 If the Customer fails to comply with his payment obligations or if we become aware of circumstances which are likely from a commercial point of view to put the principal's creditworthiness in question, all our claims shall be due for payment immediately even if we have accepted part payments in respect thereof. We shall in this case only be obliged to make additional deliveries if the principal immediately settles any overdue obligations and pays in advance for new deliveries.
- 3.8 In the event of delay in payment, we may, after notifying our contracting party in writing, suspend performance of our obligations until the payments have been received.
- 3.9 In the case of supply orders, we shall be entitled to produce the quantity ordered. The customer shall purchase the ordered goods within a one-year time limit and shall pay the purchase price charged. The invoice shall be due for payment even if the customer does not purchase the goods. Additional costs caused by a delayed requirement for goods ordered or subsequent changes to the order by a customer in respect of period or quantity shall be borne by that party; our calculation shall be decisive in this respect.

4. Variation

- 4.1 Any variations to the Supplier will need written approval prior to the change being accepted. Unapproved variations received should not be assumed as accepted.

5. Rights to Cancel the Agreement with Us

- 5.1 Bespoke Orders cannot be cancelled once work has commenced by the Supplier to fulfil that order for Goods or Services.
- 5.2 If the Customer has ordered Goods which are not a Bespoke Order, and are in possession of this Goods, Those Goods will need to be returned to the Supplier within 7 days of the cancellation request being made in writing.
This is only possible where the Supplier is able to return to their supplier(s), the Customer will be liable for any re-stock and admin charge levied by the Supplier. Some of our suppliers will not accept returned items which have been opened (taken out of their packaging), in which instance, the Supplier will not be able to accept returns.
- 5.3 The Goods must not have been used or damaged in any way, and must be returned to the Supplier at the expense of the Customer.
- 5.4 We reserve the right to charge and admin fee plus VAT to return good we have had to outsource.

6. Cancellation by the Supplier

- 6.1 The Supplier reserved the right to cancel the order at any time if:
- 6.1.1 The Company does not have the resources to deliver the Services and/or good ordered by the Customer
 - 6.1.2 One or more of the Goods or Services ordered by the Customer were listed at an incorrect price due to a typographical error, or they were quoted at an incorrect price during the confirmation of order.
 - 6.1.3 One or more of the Goods or Services ordered by the Customer involved a third party cost or disbursement that has caused an increase in completion cost of that order.
 - 6.1.4 If the Supplier does cancel the contract the Customer will be notified by e-mail. The Supplier will not be obliged to offer any additional compensation for disappointment suffered or losses incurred as a result of the cancellation of the order.

7. Terms of Performance / Passing of Risk

- 7.1 The risk of an accidental loss passes to the Customer as soon as the goods are handed over for dispatch to the forwarding agent (delivery to the agreed point of destination) or with the notification by the Supplier to the Customer that the goods are ready for dispatch (delivery ex the Supplier's premises).
- 7.2 If nothing to the contrary has been explicitly agreed, packaging and the mode of transport are at the discretion of the Supplier.

8. Drawings and Specification:

- 8.1 All drawings and specifications, dimensions and weights provided by the Supplier are approximate unless otherwise stated. Therefore, the Supplier accepts no liability for damage or injury arising from any error or omission in the information provided.
- 8.2 In the absence of an express description in writing as to the specification of Goods or Services ordered, the Supplier makes no warranties as to the specification of those Goods or Services.
- 8.3 The Supplier reserves the right to amend the description for Goods or Services offered from time to time as necessary.

9. Your Status

- 9.1 By placing an order with the Supplier, the Customer is declaring that they are over the age of 18 and have sufficient legal status to enter into a binding agreement between the Customer and the Supplier.
- 9.2 Where the Customer is a legal entity other than an individual person, the person completing the order on behalf of that legal entity is declaring that they have a legal authority to do so. Failure to hold such authority will result in the individual being personally liable as a party to the agreement.

10. Force Majeure

- 10.1 The Supplier shall have no liability to the Customer for any failure to deliver Goods or perform Services ordered or any delay in doing so or for any damage or defect to goods delivered that is caused by any event or circumstance beyond reasonable control including, without limitation to, strikes, lock-outs and other industrial disputed, breakdown of systems or network access, flood, fire, explosion or accident.

11. Delivery

- 11.1 The Supplier will deliver Goods or Services to the Customer to the address provided at the time of order.
- 11.2 In the absence of a delivery address being provided by the Customer, the Supplier may send Goods or Services to the Registered Office address of the Customer.
- 11.3 The Customer will be required to pay for postal for other delivery of Goods in accordance with pricing expressed on any quotation. Except where otherwise stated, Goods will be dispatched to the Customer as soon as possible after the order is completed.
- 11.4 Once Goods are dispatched and received by the Customer, the Customer accepts the risk for those goods.
- 11.5 If the Customer has arranged to collect goods, it is their responsibility to collect goods within 3 working days, once notified of arrival of goods. If the Customer fails to collect goods within 3 working days, the Supplier reserve the right to send these goods by our carrier and the Customer will be charged for that service.
- 11.6 It is the Customers responsibility to inspect the goods promptly on arrival. When signing for the consignment, it is the Customers responsibility to check that the number of parcels being delivered corresponds with the number of parcels stated on the consignment note. If not, the note should be mended accordingly before signature. If the consignment is signed for and accepted to be in good order, the Supplier will not be held liable for any changes, repairs or similar.
- 11.7 Any goods and/or equipment supplied by the Supplier will remain the property of the Supplier until payment is received in full. The Supplier reserves the right to full access of your premises / site to collect any such goods and/or equipment in the event of non-payment.

12. Time & Material Projects

- 12.1 The terms and conditions in this document, together with the Order, shall govern the supply by the Supplier to the Customer of a particular number of Workers for particular assignments, as referred to in the Order or otherwise agreed in writing between the parties. If there is any conflict or inconsistency between the terms and conditions in this document and any terms set out in the Order, the former shall prevail, with the exception of any terms which are expressly stated in the Order to be “special conditions” or otherwise to take precedence over the terms and conditions in this document.
- 12.2 The Supplier shall be responsible for ensuring that the number of Workers referred to in the Quotation are supplied to the Customer for the duration of their respective assignments and in so far as one or more individuals fail to attend the relevant Site(s) for some or all of the relevant, periods, the Supplier shall be responsible for ensuring that replacements (conforming in all respects with the requirements of the Contract) are supplied without delay. In extreme circumstances where the Supplier is not able to replace a Worker without a delay, a written Variation will be agreed beneficial to both parties. The Supplier will not be deemed reliable for any costs, delays or other inconveniences suffered should the Customer decide to outsource or recruit outside of Hornbill Engineering Limited to replace a Worker whom is unable to attend work for any reason.
- 12.3 The Supplier has taken all reasonable steps to verify the identity of the Worker and his legal entitlement to work in the United Kingdom, including the careful checking of the Worker’s passport, work permits, training certificates and other relevant documentation.
- 12.4 While the Supplier endeavour to ensure all our staff are trained to the highest levels for their particular roles within the Company, should the Customer have any specific requirements to training and competencies etc. This must be made clear during enquires.
- 12.5 Workers working on Time & Material assignments are required to complete daywork sheets, the Customer is required to sign these on a weekly basis and/or on completion of assignment to agree hours worked and materials supplied, these will form the backup to invoicing on a Time and Material basis.

12.6 With reference to all Assignments whether Time & Material, Fixed Rate or Supply, should any Snagging or defects be identified it is of paramount importance that these are identified by the Customer and translated to the Supplier without delay. The Supplier will endeavour to rectify any Snag items within a reasonable timeframe, but cannot be held accountable to damages which may cause snags once Workers have demobilized from site.

12.7 The Customer is obligated to supply all permits, permissions and consents for any of the Suppliers Workers to work efficiently and effectively on their Site. Delays caused by waiting for any such documents and or permissions will be subject to standing time charges.

13. Fixed Price Projects

13.1 Items 12.3, 12.4, 12.6, 12.7 as above are also relevant to Fixed Price contracts.

13.2 In the instance of Fixed Price projects, the Supplier will be entitled to milestone payments or percentage complete payments which will be processed by means of submitting a payment application for approval by the Customer, invoices will then be raised on the agreed value of completion to the specified date usually each month end.

14. Control of Services

14.1 It is a condition of acceptance of both our Quotations and our Terms & Conditions that should any Customer offer to engage or employ any of our personnel during the period they are on contract to the client and up to six months after completing that contract, then the client must first obtain written consent of the Supplier to make such an approach. In the event that any of our personnel are employed by the Customer, or any of its subsidiaries or associate companies, they will pay to the Supplier 20% of the annual commencing gross taxable remuneration of the individual concerned.

15. Quotations

Over and above items detailed in section 1.25 Quotations will inform Customers of the following:

15.1 The Supplier will by means of Quotation specify any project / job specific information such as scope of work and reference documents relevant.

15.2 This document will relay costs specific to a particular project / job such as Travel & Subsistence and hourly rates for Workers, delivery charges, import duties etc which will vary from Site to Site and depend on the duration of any project/job.

15.3 Quotations for Time & Materials in particular will state hourly rates and the hours they are relevant to i.e Stand Rate, Over Time etc.

15.4 Each quotation will verify what overheads have been included for such as tax burdens, small tools, vehicles, instruments, Hornbill Specific PPE (includes, hard hat, boiler suit, steel toecap boots, gloves, hearing protection, hi-viz vest, safety glasses). Similarly and tools, vehicles, instruments etc to be charged for will also be noted.

15.5 All specialists PPE (e.g. beehive suits, respirators, etc.) will not be included in our rates and will be charged back to the Customer at cost plus 12.5% unless supplied by the Customer.

16. Terms of Warranty and Guarantee

- 16.1 Goods supplied by Hornbill have to be inspected without delay upon receipt with regard to any defects in identity, quantity or quality. The same applies in the case of resale. The Customer is obliged to immediately notify the Supplier in the written form of all visible or invisible defects as soon as they are discovered. If the Customer fails to do so any further claims concerning defects which have not been notified in due time regarding the respective goods shall be excluded.
- 16.2 Due to the bespoke nature of majority of goods, designs and services supplied by the Supplier, we are unable to offer any other form or guarantee other than that of the Manufacturers Guarantee for parts purchased by the Supplier.
- 16.3 Proven costs which may become necessary on behalf of the Customer for transport, labour etc. resulting from the defective goods delivered will be borne by the Supplier.
- 16.4 In exceptional cases where the Supplier has granted a guarantee of quality or durability to the Customer, this guarantee entitles the Customer, in the absence of another provision, to request remedy of a defect within the guarantee period (see below) free of charge. This shall also apply if claims based on defects according to the above provisions do not exist or have ceased to exist. Malfunctioning caused by incorrect operation by the Customer is not subject to the guarantee. In the absence of an agreement to the contrary, claims other than the above mentioned remedies are not content of guarantee. The manner of remedy, exchange or repair, shall be determined by the Supplier. The claims shall be time barred after expiry of three months after expiration of the guarantee period but not prior to expiry of the respectively valid warranty period. In cases of doubt, the
- 16.5 Guarantee period shall be considered equal to the warranty period. If a durability guarantee was granted relating to the durability of the effective usage, claims of recourse may, in case of doubt, only be asserted within the warranty – or guarantee period or respectively within the period mentioned in the following paragraph. The period mentioned in the paragraph below only applies in cases where the end-user has asserted his claims within the warranty period applicable between himself and his supplier.
- 16.6 The customer is obliged to immediately notify the Supplier in writing with regard to any claims by his customers who may be asserted against the Supplier for recourse. The report of the claim has to be submitted as specific as possible in order to enable the Supplier to portray a clear picture of the defect and the appropriate corrective measures. If reasonable, the Customer will, prior to any agreement with his buyer/engineer, wait for the Suppliers comment, in particular, whether the method of remedy requested by the buyer/engineer is reasonable. In the event that the buyer/engineer should have fulfilled claims of his customers due to defective goods, the Supplier will fulfil his claim resulting there from. The claim becomes statute-barred two months after the Customer has settled the claim with the buyer/engineer, at the latest.
- 16.7 Claims of recourse do not come into being in cases where the Supplier and the Customer have entered into a package agreement regarding claims of recourse.

17. Product Liability

- 17.1 The Supplier will not countenance any claims for consequential loss or damage of any sort.
- 17.2 Liability will be limited to replacement of failed equipment only; unless incorrectly operated, in which instance it will be the Customers responsibility.

18. Entire Agreement

13.1 This document contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this document, this document may be varied only by a document signed by both parties.

19. Applicable law

13.1 The contract in all respects shall be construed and operated as an English contract in conformity with English Law.



Appendix A – IQES

Available on request.

Appendix B – Insurances

Please see attached our current Insurance Certificates.

