

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

1 INTERPRETATION

1.1

Definitions

Applicable Laws: all applicable laws, statutes, regulation and codes from time to time in force.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in Scotland are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time.

Completion: the completion of the delivery, installation and commissioning (as applicable) of the Goods and/or completion of the provision of the Services.

Completion Date: the date for completion as set out in the Order.

Contract: the contract between Portakabin and the Supplier for the sale and purchase of Goods and/or the supply of Services, which shall consist of the Order, these Conditions, the Specification and any other relevant documents referenced in such documents.

Data Protection Legislation: means in each case to the extent applicable to the parties and as amended, superseded or updated from time to time: (i) the retained EU law version of GDPR as it forms part of the law of Scotland, by virtue of the European (Withdrawal) Act 2018, as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019; (ii) the Data Protection Act 2018; (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (iv) any other applicable data protection and privacy laws.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of, or in relation to, the supply of Goods or Services, in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including any drafts thereof).

Delivery Date: the date specified in the Order.

Delivery Location: the address for delivery of Goods, or performance of Services, as set out in the Order.

Design Life: the design life of the Goods as stated in the Order.

Extended Warranty Period: has the meaning given to it in clause 3.66;

Force Majeure Event: means any circumstance not within a party's reasonable control including, without limitation:

- (a) hurricane, typhoon, cyclone, tornado, earthquake, floods, tsunamis, or other natural disaster;
- (b) epidemics, endemics, pandemics, war, blockades, acts of public enemies, acts of sabotage, acts of war (whether war be declared or not), or acts of foreign enemies;
- (c) rebellion, revolution, insurrection, military or usurped power or civil war, public disorders, terrorist acts, sabotage, riots, civil commotion disorder, or violent demonstrations or any other protests against political actions; or
- (d) injunctions, civil disobedience, protests, blockades, commercial embargoes

that materially and adversely affects either party's performance and which could not have been prevented or overcome or remedied through the exercise of due care and which is not attributable to the negligence, breach of contract, or willful misconduct of either party relying on the Force Majeure Event.

GDPR: the General Data Protection Regulation ((EU) 2016/679).

Good Industry Practice: the design, provision of Goods and / or Services which are carried out with the degree of skill, care, prudence and foresight and quality of workmanship which may reasonably be expected from time to time of a competent and experienced supplier engaged in the same type of undertaking as the Supplier under the same or similar circumstances who exercises the requisite degree of skill, quality, diligence and prudence in the design, provision of Goods and / or Services and in undertaking activities similar to the provision of the Goods and / or Services as set out in this Contract, including but not limited to:

- (a) in a safe manner and respecting the environment;
 - (b) so as to achieve the Design Life for the Goods as specified in this Contract;
 - (c) using trained and experienced personnel using high quality, safe and appropriate equipment, tools, procedures and industry standards;
 - (d) using an adequate number of personnel, materials, resources and supplies in accordance with the requirements of this Contract; and
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(e) using new and high quality fixtures, fittings, finishes, materials, plant and equipment which are free from defects and appropriate for the environment in which they are intended to be used,

and where this definition results in conflicting standards, the highest standard applies.

Goods: the goods (or any part or instalment of them) set out in the Order (including all associated Deliverables, if any).

Order: the order for the Goods or Services, as set out in the Portakabin purchase order form or Portakabin standard Purchase Order.

Portakabin: the Portakabin Group member which has issued the Order, which unless otherwise stated will be Portakabin Limited (registered in Scotland with company number SC045554).

Price: has the meaning given to such term in clause 7.1.

Services: the services (or any part or instalment of them) set out in the Order (including all associated Deliverables, if any).

Services Fee: has the meaning given to such term in clause 7.1.

Special Conditions: any conditions (other than these Conditions) set out or referenced in the Order Form (whether marked as Special Conditions or not).

Specification: any specification and technical or other requirements for the Goods or Services, (if any), including any related plans and drawings, that are prepared by Portakabin and are referred to in the Order.

Supplier: the person or firm from whom Portakabin purchases the Goods or Services, as identified **as the Supplier in the Order**.

Technical Standards: the standards applicable to the performance of the Specification and delivery, of the Goods and / or Services.

Warranty Period: such period as stated on the Order.

2 BASIS OF CONTRACT

- 2.1 A quotation issued by the Supplier shall be an offer from the Supplier to provide the Goods or Services subject to these Conditions.
- 2.2 Acceptance of an Order by Portakabin shall take place when the Order is issued by Portakabin, at which point the Contract will come into existence. Acceptance of the Order is made subject to the acceptance of the terms of the Contract only.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document issued by the Supplier (including any acknowledgment of Order, form of contract, delivery note, invoice, letter or other communication) that is inconsistent with these Conditions.
- 2.4 In the event of any conflict between the content of the documents which together comprise the Contract, the following order of priority shall apply:
- (a) the Order;
 - (b) the Special Conditions;
 - (c) these Conditions;
 - (d) the Specification;
 - (e) any other relevant documents referenced in the Contract.

3 THE GOODS AND SERVICES

- 3.1 The Supplier shall design, install, deliver and commission the Goods:
- (a) in accordance with the Specification and by the Completion Date;
 - (b) in accordance with Good Industry Practice;
 - (c) in accordance with Technical Standards;
 - (d) in a manner that does not cause damage to property which is owned or used by Portakabin or any third party; and
 - (e) such that no end of life components will be notified to Portakabin within three years from Completion.

Any end of life components shall be notified to Portakabin at least six months prior to the end of life of the component. In the event of a replacement of a component part due to expiry of its life the replacement component shall be guaranteed for the Extended Warranty period as set out in clause 3.6.

- 3.2 The Supplier shall ensure that the Goods will:

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- (a) correspond as to quantity, quality and description with the particulars stated in the Contract, including the Specification, and any applicable Deliverables, and be equal and equivalent in all respects to any samples provided by either party and accepted by the other;
- (b) (without prejudice to clause 3.2(a)) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by Portakabin, expressly or by implication, or for any purpose which the Supplier should reasonably be aware of, and in this respect Portakabin relies on the Supplier's skill and judgement;
- (c) be free from defects in design, material and workmanship at the time of delivery, and shall remain so during the continuation of the Warranty Period, without prejudice to any manufacturer's or other such warranty provided in connection with the Goods; and
- (d) comply with all applicable statutory and regulatory requirements relating to the Goods, including the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
- (e) perform in accordance with the Specification for the Design Life of the Goods.
- 3.3 Without prejudice to any of its other rights and remedies under the Contract, Portakabin shall be entitled to:
- (a) inspect and test the Goods at any time before or at Completion; and/or
- (b) inspect any premises at which the Goods are being produced, or the Services are being performed, at any time before delivery.
- 3.4 The Supplier will remain fully responsible for delivery of the Goods and / or Services despite any inspection or testing carried by Portakabin pursuant to clause 3.33 and any such inspection or testing will not reduce or otherwise affect the Supplier's obligations under the Contract. If, following such inspection, testing and/or commissioning by the Supplier, Portakabin, acting reasonably, considers that the Goods or Services do not conform, or are unlikely to comply, with the Supplier's undertakings within this clause 3, Portakabin may, at its sole election, either:
- (a) reject the relevant Goods or Services, in which case the Supplier will refund any monies paid to it by Portakabin in respect of the relevant Goods or Services, and, in respect of the Goods, at its own cost, collect the Goods from Portakabin within 5 Business Days of notice from Portakabin requiring it to do so; or
- (b) will inform the Supplier of such non-conformity and the Supplier will immediately take such remedial action as is necessary to ensure compliance. Portakabin may conduct or instruct further inspections, tests and/or commissioning after the Supplier has carried out its remedial actions as undertaken pursuant to this clause 3.4.
- 3.5 In providing the Services, the Supplier will:
- (a) co-operate with Portakabin in all matters relating to the Services, and comply with all instructions of Portakabin in a timely manner;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade and in accordance with Good Industry Practice;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services, including any applicable Deliverables, will conform with all descriptions and specifications set out in the Contract, and that the Services will be fit for any purpose that Portakabin expressly or impliedly makes known to the Supplier or any purpose which the Supplier should reasonably be aware of;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services at no additional cost to Portakabin;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Portakabin, will be free from defects in workmanship, installation and design;
- (g) not do or omit to do anything which may cause Portakabin to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business (and the Supplier acknowledges that Portakabin may rely or act on the Services); and
- (h) comply with any additional obligations as set out in the Order, Special Conditions and/or Specification.
- 3.6 Without prejudice to any other rights or remedies of Portakabin the Supplier shall, forthwith upon a request by Portakabin so to do and as reasonably determined by Portakabin, re-perform any Services found to have been performed defectively prior to Completion and/or within the Warranty Period, or replace or repair (at the sole option of Portakabin) all Goods which are, or become, defective prior to or during commissioning and/or the Warranty Period (where such defects occur under proper usage and are due to faulty design or inadequate or faulty materials or workmanship, or the Supplier's erroneous data or instructions as to use, or any breach by the Supplier of any provision of the Contract) and any re-performance, repairs and replacements shall themselves be subject to the foregoing obligations for a further periods equivalent to the Warranty Period (each an **"Extended Warranty Period"**) from the date of the relevant re-performance, repair, re-delivery, re-installation or passing of tests (if any).

4 DELIVERY

- 4.1 The Supplier will ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition, having regard to the nature of the Goods and other applicable circumstances of the delivery.
- 4.2 The Supplier will deliver the Goods, or perform the Services:
- (a) on the Delivery Date;
- (b) at the Delivery Location; and
- (c) during the normal business hours of Portakabin, or as instructed by Portakabin.

4.3 Delivery of Goods will be completed on the completion of unloading the relevant Goods at the Delivery Location. If, for any reason, Portakabin is unable to accept any delivery of Goods at the time when Goods are due and ready for delivery the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery.

4.4 Time is of the essence in respect of delivery of the Goods and performance of Services and achieving Completion in respect of both.

5 REMEDIES

5.1 If the Goods are not delivered on the Delivery Date (in whole or in part), or the Services are not performed in accordance with the Schedule of Dates set out in the Order, or the Goods or Services do not comply with the undertakings set out in clause 2.4(a) or installation and commissioning is not performed by the Completion Date then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods or Services, Portakabin may, at its sole option, exercise a remedy such as, but not limited to,:

- (a) terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- (c) require the Supplier to repair or replace the relevant Goods, or to repeat or substitute the relevant Services, or to provide a full refund of the price of the relevant Goods or Services (if paid);
- (d) refuse to accept any subsequent delivery of the Goods or performance of the Services which the Supplier attempts to make, and require a refund from the Supplier of sums paid in advance for the Goods or Services that the Supplier has not supplied; and/or
- (e) recover from the Supplier any costs incurred by Portakabin in obtaining substitute goods or services from a third party.

6 TITLE AND RISK

6.1 Title in the Goods will pass to Portakabin on the earlier of delivery and payment.

6.2 Risk in the Goods will pass to Portakabin on the later of acceptance and payment.

7 PRICE, FEE AND PAYMENT

7.1 The price of the Goods will be the price set out in the Order (the "**Price**"). The fee for the Services will be the fee set out in the Order (the "**Services Fee**"). Unless otherwise expressly provided for elsewhere in the Contract, the Price and the Services Fee:

- (a) excludes amounts in respect of VAT, which Portakabin will additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) includes the costs of packaging, insurance and carriage of the Goods; and
- (c) no extra charges will be effective unless agreed in writing with Portakabin.

7.2 The Supplier may invoice Portakabin for the balance of the Price of the Goods plus VAT at the prevailing rate (if applicable) on, or at any time after, Completion. The Supplier may invoice Portakabin for the Services Fee plus VAT at the prevailing rate (if applicable) on, or at any time after, the Completion of delivery of the Services.

7.3 Portakabin will pay undisputed correctly rendered invoices within sixty (60) days of receipt of the invoice, or such other payment term as confirmed on the Order.

7.4 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party will pay interest on the overdue amount at the rate of two per cent (2%) per annum above the Bank of Scotland's base rate from time to time. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, after judgment. The defaulting party will pay the interest together with the overdue amount. This clause will not apply to payments the defaulting party disputes in good faith.

8 INTELLECTUAL PROPERTY

8.1 The Supplier grants to Portakabin, or will procure the direct grant to Portakabin of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables for the purpose of receiving and using the Goods and Services.

9 INDEMNITY

9.1 The Supplier will indemnify, keep indemnified and hold Portakabin harmless against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs, in each case whether or not foreseeable as at the date of the Contract, (calculated on a full indemnity basis), and all other professional costs and expenses) suffered or incurred by Portakabin, or made against them, as a result of or in connection with:

- (a) any claim made against Portakabin for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods or Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against Portakabin by a third party for death, personal injury or damage to property arising out of or in connection with the supply of Goods or Services;
- (c) any claim made against Portakabin by a third party arising out of or in connection with the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and/or

(d) the Supplier's breaches and defaults in performing its obligations under the Contract.

9.2 This clause 9 will survive termination of the Contract.

10 INSURANCE

10.1 During the term of the Contract, and for a period of the Design Life of the Goods, the Supplier will maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and will, on the request of Portakabin, submit to Portakabin both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11 COMPLIANCE WITH RELEVANT LAWS AND POLICIES

11.1 In performing its obligations under the Contract, the Supplier will comply with all Applicable Law from time to time in force and any Portakabin policies notified to the Supplier from time to time including, but not limited to, "the Portakabin Supplier Code of Conduct".

11.2 Without prejudice to the generality of clause 11.1 above, the Supplier will comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015 (Modern Slavery Legislation), the Criminal Finance Act 2017, all applicable anti-bribery and anti-corruption laws, statutes, regulations and codes from time to time in force including the Bribery Act 2010 (Anti Bribery Legislation) and maintain reasonable procedures to comply with relevant tax legislation including the provisions of Part 3 of the Criminal Finances Act 2017 (Tax Evasion Legislation);

12 DATA PROTECTION

12.1 This clause 12 is in addition to and does not replace a party's obligations under the Data Protection Legislation. The terms "Controller", "Processor", "Data Subject", "Personal Data", "Process", "Processed" and "Processing" have the meanings prescribed in the Data Protection Legislation.

12.2 Each party shall comply with the Data Protection Legislation.

13 TERMINATION

13.1 Portakabin may terminate the Contract in whole or in part at any time before Completion with immediate effect by giving the Supplier written notice, whereupon the Supplier will immediately discontinue all work on the Contract which, where terminated in part, relates to such part. Portakabin will pay the Supplier fair and reasonable compensation for any cost or expenditure incurred by the Supplier in respect of any Goods or Services not yet completed at the time of termination, (but such compensation will not include loss of anticipated profits or any consequential loss), which payment shall represent full and final settlement of such early termination.

13.2 Without limiting its other rights or remedies, Portakabin may terminate the Contract at any time with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits any breach of clauses 11 or 12 of these Conditions;
- (b) the Supplier commits any breach of any other term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of being notified in writing to do so;
- (c) there is a change of control (as such term is defined in section 1124 of the Corporation Tax Act 2010) of the Supplier;
- (d) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (e) the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (f) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (g) the Supplier's financial position deteriorates to such an extent that in the opinion of Portakabin the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.3 Termination of the Contract, however arising, will not affect any of the parties' rights and remedies that have accrued as at termination.

13.4 Clauses that expressly or by implication survive termination of the Contract will continue in full force and effect.

13.5 On termination of the Contract for any reason, the Supplier will immediately deliver to Portakabin all Deliverables whether or not then complete, and return all Portakabin Materials. If the Supplier fails to do so, then Portakabin may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier will be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract. In particular, the Supplier may not, at any time, exercise any lien over any of the Portakabin Materials that may be in its possession.

14 FORCE MAJEURE

14.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

14.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

15 LIABILITY

15.1 Nothing in this Contract will limit or exclude the liability of Portakabin for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) any other liability to the extent that such liability cannot be lawfully limited or excluded.

15.2 Subject to clause 15.1, Portakabin will under no circumstances whatsoever (including but not limited to any termination of the Contract) be liable to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any consequential, indirect or special losses, or for any of the following losses (whether direct or indirect):

- (a) loss of anticipated or actual profit (including but not limited to in the event of any termination of the Contract);
 - (b) loss of use;
 - (c) loss of contract or business opportunity;
 - (d) loss of production;
 - (e) loss of anticipated savings; or
 - (f) loss of goodwill or harm to reputation.

15.3 Subject to clause 15.1, the total liability of Portakabin under and/or pursuant to the Contract shall be limited to the Price.

16 GENERAL

16.1 **Assignment and other dealings.** Portakabin may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract. The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Portakabin. If Portakabin consents to any subcontracting by the Supplier, the Supplier will remain responsible for all the acts and omissions of its subcontractors as if they were its own.

16.2 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.3 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, will be effective unless it is agreed in writing and signed by Portakabin.

16.4 **Third party rights.** No one other than a party to the Contract and their permitted assignees will have any right to enforce any of its terms (provided that Portakabin (Scotland) Limited (registered in Scotland with company number SC045554) may enforce any term of the Contract or bring a claim against the Supplier on behalf of itself and/or any Portakabin Group member in connection with the Goods or Services and/or any breach of, or in connection with, this Contract, and in so doing Portakabin Limited may recover losses suffered by any group company, irrespective of whether Portakabin Limited suffered any loss itself).

16.5 **Governing law and Jurisdiction:**

- (a) The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, will be governed by and construed in accordance with the law of Scotland.
- (b) Each party irrevocably agrees that the courts of Scotland will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.