



## PTS COMPLIANCE LTD

### TERMS AND CONDITIONS OF BUSINESS

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In these Conditions, the following words and phrases have the following meanings:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England.

**Commencement Date:** has the meaning given in Clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with Clause 15.8.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Customer:** the person or firm which purchases the Goods and/or Services from the Supplier.

**Deliverables:** the deliverables set out in the Order (if applicable).

**Delivery Location:** has the meaning given in Clause 4.1.

**Force Majeure Event:** any event or circumstance which is beyond the reasonable control of the affected party, including, but not limited to, flood, lightning, subsidence, terrorist act, fire or war, failure or shortage of power supplies, industrial action of any kind (not involving the employees of the affected party), the actions of any governmental, regulatory, judicial or statutory authority or the actions of any of the emergency services.

**Goods:** the goods (or any part of them) set out in the Order or any other goods (including spare parts) which are provided by the Supplier to the Customer in the course of providing the Services.

**Goods Specification:** the specification for the Goods (if any) that is provided by the Supplier to the Customer in the Quotation.

**Order:** the Customer's order for the Goods and/or Services, as set out in a purchase order form or as evidenced by the Customer's written acceptance of the Quotation.

**Quotation:** the quotation provided by the Supplier to the Customer setting out the details of the Goods and/or Services to be provided under the Contract and the charges payable by the Customer for such Goods and/or Services.

**Services:** the services, including any Deliverables, to be supplied by the Supplier to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services (if any) that is provided by the Supplier to the Customer in the Quotation.

**Supplier:** PTS Compliance Limited registered in England and Wales with company number 7615249 and/or any of its subsidiaries.

## **1.2 Interpretation:**

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (c) Any words following terms such as ***including, include, in particular, for example,*** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. BASIS OF CONTRACT**

**2.1** The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

**2.2** The Order shall only be deemed to be accepted when the Supplier communicates acceptance to the Customer. The Supplier may communicate its acceptance by either: (i) issuing written acceptance of the Order; or (ii) commencing the Services, at which point and on which date the Contract shall come into existence (**Commencement Date**).

**2.3** Any samples, drawings, descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures or on its website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

**2.4** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.5** Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

**2.6** These Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## **3. GOODS**

**3.1** The Goods are described in the Goods Specification.

**3.2** The Supplier, acting reasonably, reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

## **4. DELIVERY OF GOODS**

**4.1** The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**).

- 4.2** Delivery of the Goods shall be completed on the unloading of the Goods at the Delivery Location or, if the Supplier is providing installation services in respect of the Goods as part of the Services, upon their installation.
- 4.3** Any dates quoted for delivery and/or installation of the Goods are approximate only and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions.
- 4.4** If the Customer fails to accept delivery of the Goods within five Business Days of the Supplier notifying the Customer that the Goods are ready then, except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.5** If ten Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall.

## **5. QUALITY OF GOODS**

- 5.1** The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:
- (a) conform in all material respects with the Goods Specification;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2** Subject to Clause 5.3, the Supplier shall, at its option, repair or replace defective Goods, or refund the price of defective Goods in full if:
- (a) the Customer gives notice in writing during the Warranty Period and within a reasonable time of discovery (and is then able to demonstrate to the Supplier's reasonable satisfaction) that any Goods do not comply with the warranties set out in Clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost.
- 5.3** The Supplier shall not be liable for the Goods' failure to comply with the warranties in Clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with Clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the Customer interferes, alters or repairs or permits any third party to interfere, alter or repair such Goods without the written consent of the Supplier; or
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

**5.4** Except as provided in this Clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties in Clause 5.1. The Customer acknowledges that the Goods are not for resale and any resale of the Goods by or on behalf of the Customer shall immediately invalidate the warranties in Clause 5.1.

## **6. TITLE AND RISK**

**6.1** Risk in the Goods shall pass to the Customer on completion of delivery in accordance with Clause 4.2.

**6.2** Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods.

**6.3** Until title to the Goods has passed to the Customer, the Customer shall:

- (a) not remove, deface or obscure any identifying mark relating to the Goods;
- (b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery; and
- (c) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 12.1.

## **7. SUPPLY OF SERVICES**

**7.1** The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects, and in accordance with the Regulatory Reform (Fire Safety) Order 2005 and any subsequent or amendment laws or regulations and then current British Standards.

**7.2** The Customer acknowledges and accepts that the Supplier may replace the Goods when providing the Services as necessary to ensure continued compliance with any applicable law or regulatory requirement, including then current British Standards.

**7.3** The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

**7.4** The Supplier reserves the right to amend the Service Specification when providing the

Services if necessary to comply with then current British Standards, any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services.

**7.5** The Supplier shall comply with all applicable laws, including (i) prior to 25 May 2018, the UK Data Protection Act 1988 and the Data Protection Directive (95/46/EC) and (ii) on and after 25 May 2018, EU Regulation 2016/679 or any equivalent or similar legislation implemented in the United Kingdom following the United Kingdom's withdrawal from the European Union.

**7.6** The Supplier warrants to the Customer that the Services will be provided:

- (a) using reasonable care and skill in accordance with good industry practice for the fire prevention services industry in the United Kingdom; and
- (b) in such a way as to ensure compliance with the Regulatory Reform (Fire Safety) Order 2005 and any subsequent or amendment laws or regulations and current British Standards.

## **8. CUSTOMER'S OBLIGATIONS**

**8.1** The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services in accordance with the instructions of the Supplier;
- (f) ensure that the Customer's premises are operated and maintained in accordance with any applicable laws and regulations, including then current British Standards;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (h) comply with all applicable laws, including health and safety laws;
- (i) comply with any additional obligations as set out in the Service Specification and/or the Goods Specification (if applicable); and
- (j) comply with any instructions of the Supplier regarding the inspection and maintenance of its fire safety equipment.

**8.2** If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform

any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **9. CHARGES AND PAYMENT**

**9.1** The price for Goods and Services shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery.

**9.2** The Supplier, acting reasonably, reserves the right to vary its prices for the Services prevailing from time to time to reflect any material increase in external costs incurred by the Supplier or in its own overheads, or to meet new legislation standards and compliance. The Supplier shall provide the Customer with as much advance notice of any such variations as is reasonably practicable in the circumstances. Without prejudice to the foregoing, the prices for the Services shall increase on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date.

**9.3** In respect of Goods and Services, the Supplier shall invoice the Customer in accordance with the Purchase Order.

**9.4** The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice or in accordance with any alternative payment terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to the bank account nominated in writing by the Supplier.

**9.5** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax or any other applicable sales tax or duty chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of

VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

**9.6** All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**9.7** If the actual amount of assets tested at the point of works being undertaken is greater than 20% less than the assets quoted, then PTS Compliance reserves the right to charge at standard published pricing or original quoted number of assets, whichever is the lesser.

## **10. CONFIDENTIALITY**

**10.1** Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 10.2.

**10.2** Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 10; or

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**10.3** Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **11. LIMITATION OF LIABILITY**

***THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CLAUSE.***

**11.1** The provisions of this Clause 11 set out the entire liability of the Supplier (including its employees, agents, consultants and subcontractors) to the Customer and any member of its group, whether such liability arises in contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise.

**11.2** Subject to Clause 11.4, the Supplier shall not be liable for:

(c) loss of profits, loss of business, loss or depletion of goodwill, loss of anticipated savings or any special, indirect or consequential loss of any nature howsoever arising;

(d) losses arising due to the acts or omissions of any person other than the Supplier or any of its employees, agents, consultants and subcontractors, including (without limitation) the Customer and the members of its group and their respective employees, agents, consultants and subcontractors, any emergency service or another service provider; or

(e) any other losses arising as a result of circumstances beyond the Supplier's

reasonable control.

**11.3** Subject to Clause 11.4, the Supplier's total liability under the Contract shall not exceed the amount of any charges paid by the Customer to the Supplier under the Contract at the time the liability arises (subject to a maximum of the three most recent prior years' aggregate charges)

**11.4** Nothing in the Contract limits or excludes the liability of the Supplier for death or personal injury resulting from the Supplier's negligence, for fraud or fraudulent misrepresentation or for any other liability which cannot be excluded or limited by law.

**11.5** The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**11.6** This Clause 11 shall survive termination of the Contract.

## **12. TERMINATION**

**12.1** Without affecting any other right or remedy available to it, either party may terminate the Contract or cancel any of the Services by giving the other party written notice, provided that:

(f) if the Customer terminates or cancels the Contract or part thereof, by giving less than 12 months' notice in writing, then the Customer shall be liable to pay a cancellation fee to the Supplier which shall be calculated as follows:

- (i) a sum equal to the amount of the charges invoiced to the Customer in the period of 12 months prior to cancellation less 30%; or
- (ii) if the Contract has then been in force for less than 12 months, a sum equal to the total anticipated charges payable under the Contract.

Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and then fails to make such payment within seven (7) days after receipt of notice in writing from the Supplier requiring it to do so;
- (b) the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within seven (7) days after receipt of notice in writing from the Supplier requiring it to do so;
- (c) the Customer or any of its holding companies 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;

- (d) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the Customer's financial position deteriorates to such an extent that in the Supplier's reasonable opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

## **13. CONSEQUENCES OF TERMINATION**

**13.1** On termination of the Contract, the Customer shall immediately pay to the Supplier in full and cleared funds all of the Supplier's outstanding unpaid invoices. In respect of Goods and Services supplied for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt. The Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

**13.2** Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

**13.3** Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## **14. FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure results from a Force Majeure Event.

## **15. GENERAL**

### **15.1 Assignment and other dealings**

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier, which shall not be unreasonably withheld.

### **15.2 Notices**

- (a) Any formal notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

- (b) Any formal notice shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- (c) Any communication other than a formal notice given to a party under or in connection with the Contract shall be in writing and may be via email.

### **15.3 Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

### **15.4 Waiver**

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

### **15.5 No partnership or agency**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, represent either party as the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

### **15.6 Entire agreement**

- (a) 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.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

### **15.7 Third parties rights**

The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## **15.8 Variation**

- (a) Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- (b) From time to time, the Supplier may need to make changes to these Conditions to reflect current market practice for the fire safety industry. Such changes shall not require the consent of the Customer but shall be notified by the Supplier to the Customer in writing.

## **15.9 Governing law**

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 shall be governed by and construed in accordance with the law of England and Wales.

## **15.10 Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall 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.