



PHOENIX HYDRAULIC & ELECTRICAL SERVICES LIMITED – TERMS AND CONDITIONS OF SALE

1. OUR CONTRACT WITH YOU

- 1.1 Your order constitutes an offer by you to purchase standard and/or bespoke goods (**Goods**) and/or services (**Services**) in accordance with these terms and conditions (**Conditions**) and any terms set out in our quotation form or Order Confirmation (as defined below).
- 1.2 Please ensure that you read these Conditions carefully and check that the details of the order and these Conditions are complete and accurate before you submit your order.
- 1.3 Your order shall only be deemed to be accepted when we issue a written confirmation of the order (**Order Confirmation**) at which point and on which date a formal and binding contract between you and us (being Phoenix Hydraulic & Electrical Services Limited registered in England and Wales with Company Number 01562813) shall come into existence in accordance with these Conditions (**Contract**). For the avoidance of doubt we shall not be required to accept orders which you place and any acceptance shall be at our sole discretion.
- 1.4 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.5 Any quotation given by us shall not constitute an offer, and is only valid for a period of 30 days from its date of issue. Where we provide a quotation for Services which includes expenses, the amount attributable to expenses is an estimate only and we will charge you the actual amount of expenses incurred in providing the relevant Services.
- 1.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

The following clauses 1.7 and 0 only apply if you are a business customer

- 1.7 The Contract constitutes the entire agreement between us. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in the Contract.

1.8 Save for any Brochure Drawings (as defined in clause 2.2), any samples, drawings, descriptive matter or advertising issued by us and any descriptions of the Goods or illustrations or descriptions of the Services contained in any documents forwarded to you 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 except where expressly provided in these Conditions or expressly incorporated in our Order Confirmation.

2. **GOODS**

2.1 We shall supply you with the Goods of the type and in the quantities described in the Contract or where applicable as more particularly set out in a specification document attached or referred to in the Contract (**Goods Specification**).

2.2 Where the Goods to be supplied pursuant to the Contract are to be manufactured by us to your individual requirements (**Bespoke Goods**), we shall supply such Bespoke Goods in accordance with the CAD design/model which has been agreed and signed off by you (**Brochure Drawing**).

2.3 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by you, you shall indemnify us 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 and other professional costs and expenses) suffered or incurred by us in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of the Goods Specification. This clause 2.3 shall survive termination of the Contract.

2.4 We reserve the right to amend any Goods Specification if required by any applicable statutory or regulatory requirements.

3. **DELIVERY OF GOODS**

3.1 Unless otherwise set out in the Contract, delivery shall take place EX WORKS (EXW INCOTERMS 2010) at our premises at 21 Wainman Road, Woodston, Peterborough, Cambridgeshire PE2 7BU United Kingdom or such other location as we may advise before delivery (**Delivery Location**) and at any time after we have notified you that the Goods are ready.

- 3.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location or their being made available to you at the Delivery Location where delivery takes place EX WORKS (EXW INCOTERMS 2010).
- 3.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by an Event Beyond Our Control (as defined below) or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.4 If you fail to accept or take delivery of the Goods within 7 days of us notifying you that the Goods are ready, then except where such failure or delay is caused by you suffering an event similar to an Event Beyond Our Control or by our failure to comply with our obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am 2 days following the day on which we notified you that the Goods were ready; and
 - (b) we shall store the Goods until delivery takes place, and charge you for all related costs and expenses (including insurance).
- 3.5 If 14 days after we notified you that the Goods were ready for delivery you have not accepted or taken delivery of them, we may resell or otherwise dispose of part or all of the Goods and may charge you for any shortfall below the price of the Goods in addition to any other losses we suffer.
- 3.6 You shall not be entitled to reject the Goods if we deliver up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the relevant invoice on receipt of notice from you that the wrong quantity of Goods was delivered provided that where we deliver less than the quantity of Goods ordered you inform us of such discrepancy within 24 hours of delivery.
- 3.7 We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

The following clause 3.8 only applies where you are a business customer

- 3.8 If we fail to deliver the Goods our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an

Event Beyond Our Control, your failure to provide us with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4. QUALITY OF GOODS

4.1 Where we manufacture the Goods and subject to payment by you of the price in full, we will warrant that on delivery, and for a period of 12 months from the date of their delivery or installation (whichever is the sooner) (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with their description and any applicable Goods Specification or Brochure Drawing; and
- (b) be free from material defects in design (to the extent we have been responsible for the design of the Goods), material and workmanship.

4.2 We shall not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:

- (a) you make any further use of such Goods after giving a notice in accordance with clause 4.3;
- (b) the defect arises because you failed to follow our 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 defect arises as a result of us following any drawing, design or Goods Specification supplied by you;
- (d) you alter or repair such Goods without our prior written consent;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

4.3 Subject to clause 4.2, if:

- (a) you give us notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;
- (b) we are given a reasonable opportunity of examining such Goods or (at our request) you provide reasonable photographic evidence of the alleged defect; and
- (c) you (at our request) return such Goods to our place of business at your cost,

we shall, at our sole option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

4.4 We may in our sole discretion replace any alleged faulty Goods following notice provided by you in accordance with clause 4.3(a) before we have received and examined the alleged faulty Goods. We shall however be entitled to charge you for any replacement Goods (including any delivery costs etc) to the extent that: -

- (a) we reasonably determine that the alleged faulty Goods do comply with the warranty at clause 4.1 or that any fault has occurred because of your failure to comply with clause 4.2;
- (b) the alleged faulty Goods are not received by us within 14 days of us sending such replacement Goods.

4.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by us under clause 4.4.

The following clause 4.6 only applies where you are a consumer

4.6 The warranty at clause 4.1 is in addition to, and does not affect, your legal rights in relation to the Goods that are faulty or not as described.

The following clauses 4.7 to 4.9 only apply where you are a business customer

4.7 Except as provided in this clause 4, we shall have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

4.8 No warranty is given by us as to the suitability of the Goods for any particular purpose.

4.9 Where the Goods are not manufactured by us the warranty at clause 4.1 will not apply and in which case you shall be entitled to the benefit of any guarantee or warranty provided from the manufacturer to the extent we can enforce or assign such guarantee or warranty.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to you on completion of delivery.

5.2 Title to the Goods shall not pass to you until the earlier of:

- (a) us receiving payment from you in full (in cash or clear funds) for: -

- (i) the Goods; and
 - (ii) any other goods that we have supplied to you in respect of which payment has become due,
 - (b) you reselling the Goods, in which case title to the Goods shall pass to you at the time specified in clause 5.4.
- 5.3 Until title to the Goods has passed to you, you shall:
- (a) store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery;
 - (d) notify us immediately if you become subject to any of the events listed in clause 12.1(b) to clause 12.1(e); and
 - (e) give us such information relating to the Goods as we may require from time to time.
- 5.4 Subject to clause 5.5, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before we receive payment for the Goods. However, if you resell the Goods before that time:
- (a) you do so as principal and not as our agent; and
 - (b) title to the Goods shall pass from us to you immediately before the time at which resale by you occurs.
- 5.5 If before title to the Goods passes to you, you become subject to any of the events listed in clause 12.1(b) to clause 12.1(e), then, without limiting any other right or remedy we may have:
- (a) your right to resell the Goods or use them in the ordinary course of your business ceases immediately; and
 - (b) we may at any time:
 - (i) require you to deliver up all Goods in your possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if you fail to do so promptly, enter any of your premises or of any third party where the Goods are stored in order to recover them.

6. SUPPLY OF SERVICES

- 6.1 We shall provide the Services to you in all material respects in accordance with the Contract and/or where relevant as more particularly set out in a specification document attached or referred to in the Contract (**Services Specification**).
- 6.2 Where you are a consumer we will supply the Services to you during the dates agreed between us in writing.
- 6.3 We shall use all reasonable endeavours to meet any performance dates and/or delivery dates for the Services specified in the Contract or the Services Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.4 We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and we shall notify you in any such event.
- 6.5 We warrant to you that the Services will be provided using reasonable care and skill but shall have no liability whatsoever in relation to any breach of warranty in respect of the Services where such breach arises as a result of your actions in whole or in part including but not limited to any defect in the Services Specification.
- 6.6 Where you are a consumer and the Contract is a distance contract or an off-premises contract (in both cases, as defined in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013) we will not provide any Services to you during the period of 14 days commencing from the date the Contract comes into existence unless you specifically ask us to do so. Please see Schedule 1 of these Conditions in respect of any charges that may be payable by you where you subsequently cancel the Contract during that 14 day period.

7. YOUR OBLIGATIONS

- 7.1 You shall:
- (a) ensure that your order and the terms of the Contract (including where relevant the terms of any Goods Specification or Services Specification) are complete and accurate;
 - (b) co-operate with us in all matters relating to the Services;
 - (c) comply with any instructions we provide in relation to the provision of the Services;

- (d) provide us, our employees, agents, consultants and subcontractors, with safe and adequate access to your premises (or such other location at which the Services are to be provided) and other facilities as reasonably required by us to provide the Services;
- (e) ensure that our employees, agents, consultants and subcontractors, have safe, adequate and appropriate access to the relevant boat, yacht or other marine vehicle as is reasonably required to provide the Services in a safe manner;
- (f) provide us with such information and materials as we may reasonably require to supply the Services, and ensure that such information is accurate in all material respects; and
- (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.

7.2 If our performance of any of our obligations in respect of the Services is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation (**Customer Default**):

- (a) we shall without limiting our other rights or remedies have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations to the extent the Customer Default prevents or delays our performance of any of our obligations;
- (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 7.2;
- (c) we shall be entitled to charge you a reasonable amount (calculated with reference to our hourly or daily rate) in respect of any delay to the provision of the Services caused by the Customer Default; and
- (d) you shall reimburse us on written demand for any other costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

8. CHARGES AND PAYMENT

8.1 The price for Goods shall be the price set out in the Contract. Except as set out in the Contract all prices are given by us on an EX WORKS (EXW INCOTERMS 2010) basis (i.e. on the basis that the Goods are collected from our premises). Where we agree to deliver the Goods on any other basis then you shall be liable to pay the costs and charges of the transport, packaging and insurance.

- 8.2 The charges for Services shall be on a time and materials basis:
- (a) the charges shall be in accordance with our quotation and calculated in accordance with our standard applicable daily and hourly fee rates (as notified by us from time to time);
 - (b) daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on business days;
 - (c) we shall be entitled to charge you for overtime (i.e. any time worked by individuals whom we engage to provide the Services to you outside the hours referred to at 8.2(b)) at a reasonable premium on our standard rate of up to 120% of the applicable hourly rate or pro-rated daily rate (as the case may be);
 - (d) we shall be entitled to charge you for any expenses reasonably incurred by the individuals whom we engage in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by us for the performance of the Services, and for the cost of any materials; and
 - (e) any element attributable to expense contained in our quotation is an estimate only and we shall charge you for the actual expenses incurred in providing the Services.
- 8.3 We reserve the right to increase the price of the Goods, by giving notice to you at any time before delivery, to reflect any increase in the cost of the Goods to us that is due to:
- (a) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by you to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (c) any delay caused by any of your instructions in respect of the Goods or your failure to give us adequate or accurate information or instructions in respect of the Goods.
- 8.4 Where you are a consumer only and we increase the price of the Goods pursuant to clause 8.3 then you shall be entitled to terminate the relevant Contract within 7 days of us notifying you of such price increase.
- 8.5 In respect of Goods, we shall be entitled to invoice you on or at any time after completion of delivery. In respect of Services, we shall be entitled to invoice you at any time after the Services have in our (reasonable opinion) been completed.

- 8.6 Where at our sole discretion we agree to give you credit terms, you shall pay each invoice submitted by us:
- (a) within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by us, and

time for payment shall be of the essence of the Contract.

- 8.7 Where you are a business customer only, all amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us 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.

- 8.8 If you fail to make any payment due to us under the Contract by the due date for payment, then you shall pay interest on the overdue amount at the rate of 3% per annum above Lloyds Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.

- 8.9 You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 All intellectual property rights of whatever nature and arising anywhere in the world which apply or arise in connection with the design, manufacture or supply of the Goods or supply of the Services (including but not limited to any Brochure Drawings) shall be our sole and exclusive property. You shall not make any copies or reproductions or modify, deconstruct or reverse engineer any of the Goods or Services.

- 9.2 To the extent that any element of the Goods or Services contains your intellectual property then you undertake to assign to us, with full title guarantee and free from all third party rights, any such intellectual property rights.

- 9.3 You shall, promptly at our request, do (or procure to be done) all such further acts and things and the execution of all such other documents as we may from time to

time require for the purpose of securing for us the full benefit of all rights, title and interest in and to the intellectual property rights assigned to us in accordance with clause 9.2.

9.4 This clause 9 shall survive termination of the Contract.

10. CONFIDENTIALITY

You shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to you by us, our employees, agents or subcontractors, and any other confidential information concerning our business, our products and services which you may obtain. You shall only disclose such confidential information to those of your employees, agents and subcontractors who need to know it for the purpose of discharging your obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. You may also disclose such of our confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 10 shall survive termination of the Contract.

11. LIMITATION OF LIABILITY

11.1 Nothing in these Conditions shall limit or exclude our liability for:

- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) any matter in respect of which it would be unlawful for us to exclude or restrict liability.

11.2 This clause 11 shall survive termination of the Contract.

The following clauses 11.3 and 11.4 only apply if you are a consumer

11.3 If we fail to comply with the Contract, we are responsible for loss or damage you suffer that is a foreseeable result of our breach of the Contract or our negligence, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is an obvious consequence of our breach or if it was contemplated by you and us at the time we entered into the Contract.

- 11.4 If we are installing the Goods and/or providing Services in your property, we will make good any damage to your property caused by us in the course of installation or performance. However, we are not responsible for the cost of repairing any pre-existing faults or damage to your property that we discover in the course of installation and/or performance by us.

The following clauses 11.5 and 11.6 shall only apply if you are a business customer

- 11.5 Subject to clause 11.1:
- (a) we shall under no circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid under the Contract.
- 11.6 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.

12. TERMINATION

- 12.1 Without limiting our other rights or remedies we may terminate the Contract with immediate effect by giving written notice to you if:
- (a) you commit a material breach of your obligations under this Contract and (if such breach is remediable) fail to remedy that breach within 48 hours after receipt of notice in writing to do so;
 - (b) you are (or are deemed to be or we reasonably believe you are about to become) insolvent, bankrupt or suffer an event analogous thereto or are otherwise unable to pay your debts;
 - (c) you suspend or threaten to suspend, or cease or threaten to cease to carry on, all or a substantial part of your business;
 - (d) where you are a business, a change of control occurs in relation to you (within the meaning of section 1124 of the Corporation Tax Act 2010); or
 - (e) your financial position deteriorates to such an extent that in our opinion your capability adequately to fulfil your obligations under the Contract has been placed in jeopardy.

- 12.2 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under this Contract on the due date for payment.
- 12.3 Without limiting our other rights or remedies, we may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between you and us if you fail to pay any amount due under this Contract on the due date for payment, you become subject to any of the events listed in clause 12.1(b) to clause 12.1(e), or we reasonably believe that you are about to become subject to any of them.
- 12.4 On termination of the Contract for any reason:
- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has yet been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
 - (b) you shall return any materials, equipment, documents and other property belonging to us. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 12.5 Where you are a business customer and you terminate the Contract without our prior written consent and for any reason other than for our breach of the Contract then you shall indemnify us in full against all loss (including but not limited to any direct, indirect or consequential losses and loss of profit), costs and expenses incurred by us as a result of the termination.

13. CONSUMER'S RIGHTS TO CANCEL (I.E. TERMINATE) AND APPLICABLE REFUND

This clause 13 only applies if you are a consumer

- 13.1 Where we agree at our sole discretion to allow you to terminate a Contract for Goods and/or Services or where you choose to terminate because we are affected by an

Event Outside Our Control or we increase the price of the Goods in accordance with clause 8.4:

- (a) if you terminate the Contract and you have made any payment in advance for Services that have not been provided to you, or Goods that have not been delivered to you, we will refund these amounts and any delivery charges to you;
- (b) however, if you terminate a Contract for Services and we or any of our agents, suppliers or subcontractors have already started work on the Contract by that time, you will pay us any costs we reasonably incurred in starting to fulfil the Contract (including but not limited to any cancellation charges from our sub-contractors or suppliers in relation to the Contract), and this charge will be deducted from any refund that is due to you or, if no refund is due to you, invoiced to you. We will tell you what these costs are when you contact us. However, where you have terminated the Contract because of our failure to comply with the Contract (except where we have been affected by an Event Outside Our Control), you do not have to make any payment to us.

13.2 Unfortunately, as any Bespoke Goods are made to your specific requirements, you will not be able to terminate the Contract once we have commenced work on the Bespoke Goods (but this will not affect your legal rights as a consumer in relation to Bespoke Goods that are faulty or not as described).

13.3 Where you are a consumer and the Contract is a distance contract or an off-premises contract (in both cases, as defined in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013) you may have additional rights to cancel the Contract. Please see Schedule 1 for full details of those rights and how you may exercise them.

14. EVENTS BEYOND OUR CONTROL

14.1 For the purposes of this Contract, an **Event Beyond Our Control** means an event beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of third party suppliers or subcontractors.

14.2 We shall not be liable to you as a result of any delay or failure to perform our obligations under this Contract as a result of an Event Beyond Our Control.

14.3 If you are a consumer you may terminate the Contract if an Event Outside Our Control takes place and you no longer wish us to provide the Goods and/or Services.

14.4 If the Event Beyond Our Control prevents us from providing any of the Services and/or Goods for more than 4 weeks, we shall, without limiting our other rights or remedies, have the right to terminate this Contract immediately by giving written notice to you.

15. GENERAL

15.1 Assignment and other dealings:

(a) We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of our rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

(b) You shall not, without our prior written consent, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of your rights or obligations under the Contract.

15.2 Notices:

(a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or by e-mail to sales@phoenixmarinesolutions.co.uk.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one business day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.3 Severance:

(a) 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.

- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 15.4 **Waiver:** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy 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 any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.6 **Third parties:** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.7 **Variation:** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by us.
- 15.8 **Governing law and jurisdiction:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and subject to clause 15.9 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 15.9 **LCIA Arbitration:** At our option any disputes arising out of or in connection with the Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by Arbitration under LCIA Rules, which rules are deemed to be incorporated by reference to this clause. The number of arbitrators



shall be one. The seat or legal place of arbitration shall be London and the language of arbitral proceedings shall be English.

Schedule 1 – Distance and Off-premises Contracts (Cancellation Rights)

1. This Schedule 1 applies only where you are a consumer and the Contract is a distance contract or an off-premises contract (in both cases, as defined in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013) (**Consumer Contracts Regulations**).
2. In general terms, the Contract will be a distance contract where it is concluded using an organised distance-selling method such as telephone, mail order or a website and it will be an off-premises contract where it is concluded away from our usual business premises. However this list is not exhaustive and these general descriptions will not always apply – the definitions in the Consumer Contracts Regulations will always apply in preference to the general descriptions given in this paragraph.
3. You have the right to cancel the Contract within 14 days without giving any reason.
4. The cancellation period will expire after 14 days from:
 - (a) (in the case of Goods) the day on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the relevant Goods; or
 - (b) (in the case of Services) the day on which the Contract comes into existence.
5. To exercise the right to cancel, you must inform us of your decision to cancel the Contract by a clear statement (e.g. a letter sent by post, fax or e-mail). You may use the model cancellation form attached at Schedule 2, but it is not obligatory. Our contact details are set out on the Order Confirmation.
6. To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.
7. Where you are a consumer, we are under a legal duty to supply Goods that are in conformity with this Contract. As a consumer, you have legal rights in relation to Products that are faulty or not as described

EFFECTS OF CANCELLATION

8. If you cancel the Contract, we will reimburse to you all payments received from you, including the cost of delivery of any Goods (except for the supplementary costs arising if you chose a type of delivery other than the least expensive type of standard delivery offered by us).
9. We may make a deduction from the reimbursement for loss in value of any Goods supplied, if the loss is the result of unnecessary handling by you. You are only liable for

any diminished value of the Goods resulting from the handling other than that which is necessary to establish the nature, characteristics and functioning of the Goods.

10. If you asked us to begin the performance of any Services during the cancellation period, you shall pay us an amount which is in proportion to what has been performed until you have communicated to us your cancellation of the Contract, in comparison with the full coverage of the Contract. If the Services have been performed in full, you will not be able to cancel the Contract even if the cancellation period has not expired.
11. We will make the reimbursement without undue delay, and not later than: –
 - (a) 14 days after the day we receive back from you any Goods supplied, or
 - (b) (if earlier) 14 days after the day you provide evidence that you have returned the Goods.
12. We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement.
13. Unless we have agreed to collect the Goods, you shall send them back or hand them over to us without undue delay and in any event not later than 14 days from the day on which you communicate your cancellation of the Contract to us. The deadline is met if you send back the Goods before the period of 14 days has expired.
14. Unless we agree otherwise, you will have to bear the direct cost of returning the Goods.



Schedule 2 – Model Cancellation Form

(Complete and return this form only if you wish to withdraw from the contract)

To: PHOENIX HYDRAULIC & ELECTRICAL SERVICES LIMITED

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods [*] or services [*],

Ordered on [*/received on [*]:

Name of customer(s):

Address of customer(s):

Signature of customer(s) (only if this form is notified on paper):

Date:

[*] Delete as appropriate