



Global-MSI

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Terms & Conditions of Sale

1. Interpretation

- 1.1. The following definitions and rules of interpretation apply in this agreement.
- 1.2. "Contract"; the contract between the Company and the Customer for the supply of Goods and Services in accordance with these Conditions.
- 1.3. "Conditions"; the terms and conditions set out in this document.
- 1.4. "Company"; Global-MSI division of MS INTERNATIONAL plc registered company number 653735.
- 1.5. "Customer"; the person or firm that purchases the Goods and Services from the Company.
- 1.6. "Force Majeure Event"; has the meaning given to it in clause 15.
- 1.7. "Goods"; the goods (or any part of them) set out in the Order.
- 1.8. "Intellectual Property Rights"; referring to copyright, trademarks, design rights and patents.
- 1.9. "Order"; the Customer's order for the supply of Goods and Services, as set out in the Customer's order, or the Customer's written acceptance of the Company's quotation.
- 1.10. "Price"; means the price payable by the Customer to the Company for the Works, as set out in the Order;
- 1.11. "Quotation"; the Company's quotation referred to in the Order.
- 1.12. "Services"; the services supplied by the Company to the Customer as set out in the Specification.
- 1.13. "Specification"; the description of the Services provided in writing by the Company to the Customer.

2. Basis of contract

- 2.1. 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.
- 2.2. Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 30 days from its date of issue, unless noted otherwise in the quotation.
- 2.3. Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations provided are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

3. Goods & Services

- 3.1. The Goods are described in the Quotation as modified by any applicable Specification. The Company shall supply the Services to the Customer in all material respects.
- 3.2. Except as specifically agreed in writing by the Customer and the Company, the Company's Quality and Specification Standards shall apply to all Goods supplied under the Contract.
- 3.3. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Company 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 reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification. This clause shall survive termination of the Contract.
- 3.4. The Company reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.

4. Delivery of Goods

- 4.1. The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree.
- 4.2. The Company shall use all 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. The Company 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 Company with adequate delivery instructions or any other information that is relevant to the supply of the Goods.
- 4.3. If the Company is unable to perform its obligations to the Customer (or able to perform them only at unreasonable cost) because of circumstances beyond its control, the Company may cancel or suspend any of its obligations under the contract, without liability.
- 4.4. Examples of those circumstances include act of God, pandemic, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.
- 4.5. The Company will provide and agree a programme of works and will make all reasonable endeavours to work to a programme if provided by the Customer. The Company will accept no responsibility for being unable to comply with a programme if affected by matters outside its control. Any delays caused to the Company's programme may incur additional costs, for which the Company reserves the right to charge accordingly. Should a delay to the construction programme occur between placement of order and delivery of materials to site, we reserve the right to issue an interim invoice covering costs incurred to date.
- 4.6. The Customer is responsible for supplying the Company with complete design information and details including satisfactory responses to requests for information issued by or on behalf of the Company within the agreed timescale in order to allow manufacture within the reserved time slot. Should the information not be provided by the Customer within the agreed timescale the Company reserves the right to allocate the reserved manufacture time slot to an alternative project. Should an alternative project not be available, the Company may charge all costs arising from the delay including standing time to the Customer.

5. Quality & Design of Goods

- 5.1. The Company warrants that on delivery, and for a period of 12 months from the date of delivery ("warranty period"), the Goods shall:
 - 5.1.1. conform in all material respects with the Goods Specified;
 - 5.1.2. be free from material defects in design, material and workmanship;
- 5.2. Subject to clause 5.3, the Company shall, at its option, repair or replace the defective Goods if:
 - 5.2.1. the Customer gives 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 5.1 and;
 - 5.2.2. the Company is given a reasonable opportunity of examining such Goods;
- 5.3. The Company shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
 - 5.3.1. the defect arises because the Customer failed to follow the Company's oral or written instructions as to the commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 5.3.2. the defect arises as a result of the Company following any drawing, design or Goods Specification supplied by the Customer;
 - 5.3.3. the Customer alters or repairs such Goods without the written consent of the Company;
 - 5.3.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 5.3.5. the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4. Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

- 5.5. The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company.
- 5.6. Design will be in accordance with:
 - 5.6.1. BS EN 1990:2002 Eurocode – Basis of structural design
 - 5.6.2. BS EN 1991-1-1:2002 Eurocode 1: Actions on structures – General Actions – Densities, self-weight, imposed loads for buildings
 - 5.6.3. BS EN 1991-1-3:2003 Eurocode 1: Actions on structures – General Actions – Snow loads
 - 5.6.4. BS EN 1991-1-4:2005 Eurocode 1: Actions on structures – General Actions – Wind actions
 - 5.6.5. BS EN 1991-1-7:2006 Eurocode 1: Actions on structures – General Actions – Accidental actions
 - 5.6.6. BS EN 1993-1-1:2005 Eurocode 3: Design of steel structures – General rules and rules for buildings
 - 5.6.7. BS EN 1993-1-8:2005 Eurocode 3: Design of steel structures – Design of joints
 - 5.6.8. SCI P358 Joints in steel construction: Simple joints to Eurocode 3
 - 5.6.9. SCI P398 Joints in steel construction: Moment-resisting joints to Eurocode 3
6. Title and risk
 - 6.1. The risk in the Goods shall pass to the Customer on completion of delivery.
 - 6.2. Title to the Goods shall not pass to the Customer until the Company receives payment in full for the Goods and any other goods that the Company has supplied to the Customer in respect of which payment has become due. The Company reserves the right to remove goods or services which are not paid for in their entirety for whatever reason and charge additional costs for their removal.
 - 6.3. Until the Customer pays all debts owing to the Company:
 - 6.3.1. All goods supplied by the Company remain its property;
 - 6.3.2. The Customer must store them so that they are clearly identifiable as property of the Company;
 - 6.3.3. The Customer must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for the Company;
 - 6.3.4. Despite title to the goods being retained by the Company, it has the right to take legal proceedings to recover the price of goods supplied should the Customer not pay the Company by the due date.
7. Customer's obligations
 - 7.1. The Customer shall:
 - 7.1.1. Ensure that the terms of the Order and any information it provides are complete and accurate;
 - 7.1.2. Co-operate with the Company in all matters relating to the Services;
 - 7.1.3. Provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's work sites as reasonably required by the Company to provide the Services;
 - 7.1.4. Provide the Company with such information as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 7.1.5. Prepare the Customer's work sites for the supply of the Services;
 - 7.1.6. 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;
 - 7.1.7. Comply with all applicable laws, including health and safety laws;
 - 7.1.8. Keep all materials, equipment, documents and other property of the Company ("Company Materials") at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition and not dispose of them.
 - 7.1.9. Where the contract provides for the provision of services, the Customer must provide the Company with adequate access to the installation site and whilst at the installation site, ensure the safety of all of our employees, agents or sub-contractors; and if required by us and at your expense provide heat, necessary power, water, site welfare facilities, storage facilities, hoarding and scaffolding, hoisting, attendant labour and a central waste deposit/skip.

- 7.2. If the Company'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"):
 - 7.2.1. without limiting or affecting any other right or remedy available to it, the Company 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 Company's performance of any of its obligations;
 - 7.2.2. the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 7.2; and
 - 7.2.3. the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
 - 7.2.4. The Customer shall indemnify the Company in full and hold it harmless from all expenses and liabilities it may incur following any breach by the Customer of any of its obligations under these terms.
8. Charges and payment
 - 8.1. The Company reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Company that is due to:
 - 8.1.1. any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 8.1.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - 8.1.3. any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods.
 - 8.2. 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).
 - 8.3. The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.
 - 8.4. Rates of tax and duties on the goods will be those applying at the time of delivery.
 - 8.5. The Price excludes the costs of testing and the providing of samples which may be subject to an additional charge.
 - 8.6. The Price for the provision of services is calculated on the basis of normal working hours from Monday to Friday inclusive.
 - 8.7. The Price makes no allowance for retention.
 - 8.8. If the Customer has an approved credit account, payment is due no later than the end of the month following the month of invoice, unless otherwise agreed in writing. Should the Customer's credit limit be withdrawn by our credit insurers at any time during the contract, the Company reserves the right to renegotiate payment terms based upon deposit and stage invoicing for payments prior to issue of materials to site and commencement of installation.
 - 8.9. If the Customer fails to pay us in full on the due date the Company may:
 - 8.9.1. suspend or cancel future deliveries;
 - 8.9.2. cancel any discount offered;
 - 8.9.3. charge interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998;
 - 8.10. Where any certification is required as part of the works, documentation is to be forwarded to the Customer when full and final payment has been received.

9. Intellectual property rights

9.1. All Intellectual Property Rights in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Company. All estimates, designs, drawings, plans or other written work prepared by the Company and the intellectual property rights therein shall at all times remain the property of the Company. The same must not in whole or in part be copied, publicised or made available to any third party without the prior written permission of the Company. All drawings, specifications, written instructions and the like supplied by the Company in connection with this or any contract shall at all times be treated as confidential.

10. Data protection and data processing

10.1. Both parties will comply with all applicable requirements of the Data Protection Legislation.

11. Confidentiality

11.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business affairs of the other party, except as permitted by clause 11.2.

11.2. Each party may disclose the other party's confidential information:

11.2.1. 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 clause 11; and

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

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

12. Limitation of liability:

12.1. Nothing in these Conditions shall limit or exclude the Company's liability for:

12.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

12.1.2. fraud or fraudulent misrepresentation;

12.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;

12.1.4. defective products under the Consumer Protection Act 1987; or

12.1.5. any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

12.2. Subject to clause 12.1:

12.2.1. the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

12.2.1.1. any loss of profit; or

12.2.1.2. any indirect loss; or

12.2.1.3. any consequential loss

arising under or in connection with the Contract; and

12.2.2. the Company's total liability to the Customer 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 of the Goods.

13. Termination

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

- 13.1.1. the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- 13.1.2. the other party 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.
- 13.1.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 13.1.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

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

- 13.2.1. the Customer fails to pay any amount due under the Contract on the due date for payment;
- 13.2.2. there is a change of control of the Customer.

13.3. Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4, or the Company reasonably believes that the Customer is about to become subject to any of them.

14. Consequences of termination

14.1. On termination of the Contract:

- 14.1.1. the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 14.1.2. the Customer shall return all of the Company Goods which have not been fully paid for. If the Customer fails to do so, then the Company 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.

14.2. 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.

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

15. Force majeure

15.1. 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 result from events, circumstances or causes beyond its reasonable control.

16. Installation

- 16.1. Whilst the Company will take all reasonable care in carrying out the installation, it cannot accept liability for any damage or redecoration works arising as a result of the installation, including any damage resulting from structural or other defect in the premises in or on which the Goods are installed.
- 16.2. It is assumed that when working on or connecting to an existing structure, the existing structure is fully lined and level and is able to receive the proposed material/connection without the need for remedial or preparatory work.
- 16.3. If a claim is made against the Company in respect of the installation, the Customer is to indemnify the Company in full and hold it harmless from all expenses and liabilities it may incur (directly or indirectly including financing costs, legal costs on a full indemnity basis and the costs of instructing a debt collection agency to recover a debt due to it if any) in connection with such claims.
- 16.4. The Company allows in the provision of any Services for installation tolerances in accordance with the British Standard tolerances in existence from time to time.
- 16.5. When overhead lifting work is being carried out on operational service stations the site may need to be closed at various times to ensure the safety of the Company employees, site staff and members of the public.
- 16.6. Unless specifically mentioned to the contrary no allowance has been made for:
 - 16.6.1. Weld testing of the steel members
 - 16.6.2. Fire stopping or fire protection to the steel frame or cladding
 - 16.6.3. Boundary wall conditions
 - 16.6.4. Cutting of, or making good protrusions or penetrations through roof or wall panels
 - 16.6.5. Air pressure testing of the building
- 16.7. Where the price includes for reusing existing materials, care will be taken in their removal, storage and reuse. However, the Company cannot guarantee that breakages or damage will not occur. In the event of breakages or damage, the Customer will be responsible for paying and arranging for replacements.

17. General

17.1. Assignment and other dealings.

- 17.1.1. The Company 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.
- 17.1.2. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, 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 Company.

17.2. Notices

- 17.2.1. Any notice given to a party in connection with this agreement shall be in writing and shall be:
 - 17.2.1.1. delivered by hand or by first-class post or
 - 17.2.1.2. sent by email to the Company at info@global-msi.com;
- 17.2.2. Any notice shall be deemed to have been received:
 - 17.2.2.1. if delivered by hand, on signature of a delivery receipt; and
 - 17.2.2.2. if sent by pre-paid first-class post at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - 17.2.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- 17.3. 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.

- 17.4. 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 right or remedy. 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.
- 17.5. 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, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 17.6. Entire agreement.
- 17.6.1. 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.
- 17.6.2. 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 or negligent misrepresentation based on any statement in the Contract.
- 17.7. Third parties rights.
- 17.7.1. Unless it expressly states otherwise, 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.
- 17.7.2. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 17.8. Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing by the parties (or their authorised representatives).
- 17.9. 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.
- 17.10. 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.