HORNBECK

Terms and Conditions of Sale

In these terms and conditions of sale (**"Terms and Conditions"**), unless the context requires otherwise:

"Buyer/You/Yours"	means the company, firm, body or person purchasing the Goods;
"**Contract**"	means an agreement between Us and You for the supply of Goods and/or Services;
"**Confirmation of Order"**	means the notification sent by Us to You confirming the Goods to be sold and/or the Services to be provided, and the Price to be paid;
"Data Protection Legislation"	means the General Data Protection Regulation, Regulation (EU) 2016/679 as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as further amended or modified by the laws of the United Kingdom from time to time, the Data Protection Act 2018 and any successor, secondary legislation or regulations as amended or updated from time to time.
"Goods"	means the goods which We agree to supply in accordance with these Terms and Conditions and as may be described in the Confirmation of Order;
"Installation Location"	means the site where the Goods are to be installed as described in the Confirmation of Order;
"Hornbeck/We/Us/Our"	means Hornbeck Ltd trading as Hornbeck, company registration number 0761782, registered office 32, Henry Road, Barnet, Herts EN4 8BD;
"Manufacturer"	means the manufacturer of the Goods;
"Order"	means a purchase order in respect of the Goods that you issue to Us;
"Price"	means the price for the Goods as specified by Us which shall, unless We agree otherwise, exclude delivery and insurance costs;
"Quotation"	means our statement setting out the estimated costs for the Goods or Services;
"Services"	means the services We agree to supply in accordance with these Terms and Conditions as may be described in the Confirmation of Order.

1. GENERAL

1.1 These Terms and Conditions will apply to every contract ("the Contract") for the supply and installation of Goods by Us. The Contract will be subject to these Terms and Conditions alone. Any variation of these Terms and Conditions must be expressly agreed by Us in writing.

1.2 Any description contained in Our catalogues, samples, price lists, website or other advertising material is intended only to present a general picture of the Goods and will not form a representation or be part of the Contract.

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2. SPECIFICATIONS, NON-STANDARD ORDERS, ALTERATIONS

2.1 If Goods and/or Services are supplied in accordance with Your Specifications (**"Specifications"**) You will be responsible for the Specifications and ensuring that they are suitable and accurate. We do not accept the return of any Goods supplied to You if that return is due to incorrect information provided by You.

2.2 Proofs of Goods supplied to Your Specifications must be signed and accepted by You. We cannot guarantee colours of final products and Specifications may alter slightly as part of the production process. We aim to ensure that Goods are a commercially acceptable match but We do not accept any responsibility for any variances and You agree that We will not be liable for those.

2.3 We reserve the right to ask you to pay in advance for any Goods and/or Services supplied to Your Specifications.

2.4 Where You supply Goods for Us to manufacture, process, adapt or in any way work on, We do not accept responsibility for any loss or damage caused to Your Goods as a result of any work that we carry out. It is Your responsibility to ensure that Your Goods are suitable for the work that You ask us to undertake.

3. CANCELLATION OR VARIATION OF ORDERS

You cannot cancel, suspend or vary an Order except with Our agreement in writing and on terms that You will indemnify Us in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by Us as a result of the cancellation.

4. PRICES

4.1 We may issue You with a Quotation for any Goods or Services. Where We issue You with a quotation this will be based upon information that You supply to Us and We will not be bound by any Quotation in the event that the information You have supplied is inaccurate. Quotations are not intended to be a legally binding offer by Us and We reserve the right to vary them until such time as We have supplied You with a Confirmation of Order.

4.2 Except as otherwise stated in any Confirmation of Order or other marketing documentation, and unless otherwise agreed in writing, all prices are exclusive of delivery.

4.3 There shall be added to the price for the Goods any cost of value added tax and any other tax or duty relating to the transportation, sale or delivery of the Goods or supply of the Services.

5. TERMS OF PAYMENT

5.1 Subject to any special terms agreed in writing between Us, payment of the Price and any VAT is due upon placement of the Order with Us. Payment must be made in full before delivery and shall be made in £Sterling unless We agree otherwise.

5.2 Time of payment shall be of the essence. If you fail to make any payment on the due date then, without prejudice to any other right or remedy available to Us, We shall be entitled to cancel the Order or suspend any further deliveries or performance under this Contract or any other Contract with You.

5.3 If We have granted You credit facilities, such credit facilities are entirely at Our discretion and We may withdraw them at any time.

6. DELIVERY AND COMPLETION DATES

6.1 Unless We agree otherwise in the Confirmation of Order, We will deliver the Goods to You and delivery shall take place when the Goods are unloaded at or delivered by Us or Our agent or contractor to Your premises or such other delivery location that We agree.

6.2 Where we agree that you will collect the Goods, delivery will take place under this clause 6.2 when You have collected the Goods from Us.

6.3 The dates for delivery of the Goods and/or provision of the Services ("delivery") are approximate only and time is not of the essence for delivery. We will use reasonable endeavours to complete delivery on or before dates requested by You but will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver.

6.4 You shall accept immediate delivery or arrange to collect the Goods or arrange suitable storage, failing which We may either: -
- 6.4.1 effect delivery by whatever means We think most appropriate; or
- 6.4.2 arrange storage at Your risk and expense pending delivery; or
- 6.4.3 resell or otherwise dispose of the Goods without prejudice to any other rights We may have against You for breach of contract or otherwise.

6.5 You shall indemnify Us against all costs, losses and expenses suffered or incurred as a result of Your failure to accept immediate delivery.

6.6 You agree to provide to Us with access to such facilities, utilities and equipment as may be necessary to enable Us to fulfil Our obligations to You. If We are unable to gain access and We make a further attempt to deliver the Goods or to provide the Services, You shall be responsible for any additional costs, losses and expenses incurred as a result of this.

7. EXAMINATION; CLAIMS; RETURN OF GOODS

7.1 You shall examine the Goods upon delivery and You shall:
- 7.1.1 notify Us in writing where relevant within 24 hours of the delivery (or proposed delivery) of non-delivery or short delivery;
- 7.1.2 notify Us in writing within three working days of delivery or receipt of any apparent damage, defect or shortage;

7.2 You shall comply with the carrier's rules regulations and requirements so, when appropriate, We may make a claim against the carrier in respect of any damage or loss in transit.

7.3 If you do not notify Us correctly under the provisions of clause 7, subject to any claim which You may have under clause 9, We shall be deemed conclusively to have properly performed Our obligations under the Contract.

8. INSTALLATION SERVICES

8.1 Where we provide installation services for You, this clause 8 shall apply.

8.2 It is Your responsibility to ensure that:
- 8.2.1 You provide us with clear and unfettered access to the Installation Location;
- 8.2.2 You ensure that You provide us with clear and accurate instructions regarding the Installation Location so that We may make appropriate provisions to ensure that We may meet our obligations. If We are unable to do so, We shall have no liability in respect of Your failure under this clause 8.2.2 and You agree that You will be liable for any additional costs whatsoever in respect of the same.
- 8.2.3 when We attend Your premises, You use best endeavours to ensure Our health and safety and that of Our employees and Sub-Contractors.

8.3 We shall not be obliged to reinstate or make good any part of the Site which may be affected by the installation. We will make good and leave tidy the installation Site but we do not accept responsibility for and cannot guarantee that the installation Site will be completely re-instated.

8.4 We accept no responsibility for the co-ordination of the installation with any other services provided by third parties. We will provide such information as may be reasonably requested by You to assist any such third party but any alterations to or any re-working of the installation required by such co-ordination will be subject to an additional charge.

8.5 Any request for alterations or additions to the installation must be in writing and may be subject to an additional charge.

8.6 You shall examine the Services immediately upon completion and You shall notify Us in writing within 24 hours of completion where you believe there to have been an incomplete or inaccurate provision of those Services.

8.7 Upon receipt of a notification under clause 8.6, We shall contact You to agree an appropriate resolution of the issue notified to Us.

9. WARRANTY: LIMIT OF RESPONSIBILITY

9.1 In respect of Goods supplied but not manufactured by Us, the warranties given by Us will be equivalent to the warranty (if any) which We received from the manufacturer or supplier of such Goods but not so as to impose a liability greater than that imposed on Us by the warranty in clause 9.2. and the warranties given under this clause shall in any event apply only if You have given Us written notice and satisfactory proof of any relevant defect within the applicable period specified in this clause 9.

9.2 We will not be liable for a breach of the warranty in clause 9.1 unless:

9.2.1 You give Us and the carrier (if the defect is as a result of damage in transit) written notice of the defect, within seven days of the time when You discover or ought to have discovered the defect and You show to Our satisfaction that the Goods are defective; and

9.2.2 We are given a reasonable opportunity after receiving the notice of the defect to examine such Goods and You (if We ask you to) return such Goods to Our place of business at Your cost for the examination to take place there.

9.3 We shall not be liable for a breach of the warranty in clause 9.1 if:

9.3.1 You make any further use of such Goods after giving such notice; or

9.3.2 the defect arises because You failed to follow Our instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

9.3.3 You replace, repair or fit parts to the Goods which were not supplied by Us, or without Our written consent;

9.3.4 if the Goods have been stored, handled or applied in such a way that damage is likely to occur;

9.3.5 if You have not paid by the due date for payment for all Goods supplied whether under the Contract or under any other contract between Us and You;

9.3.6 the defect is caused by vandalism or damage caused by anyone other than Us;

9.3.7 the defect is as a result of any factor not known to Us at the time We entered into this Contract with You;

9.3.8 the defect is as a result of ground conditions, moisture levels, sunlight, shade, microbial attack or such things.

9.4 Subject to clauses 9.1 and 9.2, all warranties, clauses or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.5 Except for liability for death or personal injury arising from Our negligence and fraudulent misrepresentation or for any other liabilities that cannot be excluded or limited in law, Our option to repair, replace, re-perform or refund shall constitute the full extent of Our liability in respect of any loss or damage sustained by You (whether caused by any breach of the Contract or by misrepresentation (unless fraudulent) or by Our negligence, Our employees or agents or arising from any other cause whatsoever) and We shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities, whether direct, indirect or consequential (including, without limitation, loss of profits) suffered by You.

9.6 To the extent permitted in law, Our maximum liability under or in connection with the Contract shall be limited to the price of the Goods or £100,000 whichever is the lower.

10. TITLE TO GOODS

10.1 Risk of damage to or loss of the Goods shall pass to You at the time of delivery of the Goods in accordance with clause 6 or, if You fail to take delivery of the Goods, the time when We have tendered delivery of the Goods, and You should insure the Goods accordingly.

10.2 Notwithstanding that risk in the Goods shall pass to You in accordance with clause 10.1, legal and beneficial ownership of the Goods shall remain with Us until payment in full has been received by Us:

10.2.1 for those Goods;

10.2.2 for any other goods supplied by Us;

10.2.3 of any other monies due from You to Us on any account.

10.3 Until property in the Goods passes to You under clause 10.2 You shall:

10.3.1 be bailee of the Goods;
10.3.2 keep the Goods separately and readily identifiable as Our property;
10.3.3 not use, sell or dismantle the Goods; and
10.3.4 allow Us access to Your premises to inspect the Goods.

11. TERMINATION

11.1 Without limiting Our other right or remedies, We may terminate the Contract with you if:
11.1.1 You commit a material breach of any clause of these Terms and Conditions and if such a breach is remediable, You fail to remedy that breach within 14 days of Us requesting You to do so; or
11.1.2 You take any step or any step or action in connection with Your entering administration, provisional liquidation or any composition or arrangement with Your 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 Your assets or ceasing to carry on business; or
11.1.3 You take any step or action in connection with Your being made bankrupt, entering any composition or arrangement with Your creditors, having a receiver appointed to any of Your assets, or ceasing to carry on business; or
11.1.4 You suspend, or threaten to suspend, or cease or threaten to cease to carry on all or a substantial part of it Your business.
11.2 Termination of the Contract, howsoever arising, shall not affect any of Our or Your rights and remedies that have accrued as at termination.

12. DATA PROTECTION

12.1 We and You agree to comply with our respective obligations under the Data Protection Legislation in respect of any Personal Data, which we supply or receive under, or in connection with, this Contract in our respective roles as either Data Controller or Data Processor (as defined under Data Protection Legislation). Where a party is Data Controller it will ensure that it has obtained from all relevant Employees all consents which may be necessary in order for it, or the Data Processor, to lawfully process Personal Data about those Employees for the purposes of delivering the Services and Products.
12.2 Each party warrants that it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and the accidental loss or destruction of, or damage to, Personal Data.

13. FORCE MAJEURE

13.1 A “Force Majeure Event” means any circumstances not within Our or Your reasonable control including but not limited to: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; interruption or failure of utility services.
13.2 Provided We or You have complied with clause 13.3, if We or You are prevented, hindered or delayed in or from performing any obligations under this Contract by a Force Majeure Event, the affected party (“Affected Party”) shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
13.3 The Affected Party shall:
13.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 14 days from its start, notify the other party of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform any of its obligations under the contract; and
13.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

13.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of 20 days, the party not affected by the Force Majeure Event may terminate this Contract by giving 5 days written notice to the Affected Party.

14. ASSIGNMENT AND SUBCONTRACTING

14.1 None of Your rights or obligations under the Contract may be assigned or transferred in whole or in part without Our prior written consent.

14.2 We shall be entitled to subcontract any work relating to this Contract.

14.3 We shall be entitled to assign Our rights under this Contract provided that We give You prior written notice.

15. NOTICES

15.1 Any notice or other communication to be given under these clauses must be in writing and may be delivered or sent by pre-paid first-class letter post

15.2 Any notice or document shall be deemed served, if delivered, at the time of delivery 48 hours after posting

16. INVALIDITY

The invalidity, illegality or unenforceability of any provision of this Contract in whole or in part shall not prejudice the effectiveness of the rest of this Contract or the remainder of any part of a clause affected.

17. WAIVER

No waiver by Us of any breach of the Contract by You shall be considered as a waiver of any subsequent breach of the same or any other provision.

18. THIRD PARTY RIGHTS

A person who is not party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

19. LAW AND JURISDICTION

The Contract shall be governed by and construed in all respects in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts.