



Updated December 2023

Terms & Conditions

Advanced Air (UK) Limited – Terms and Conditions for Supply of Services THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

1 INTERPRETATION

"Acknowledgement of Order" means the confirmation of the Services to be provided by the Supplier to the Customer subject to these conditions;

"Customer" means the Company, person or firm as detailed in the Acknowledgement of Order as purchasing the Services;

"Commencement Date" means the date on which the Customer's offer is accepted by the Supplier;

"Commissioning" means the commissioning of Goods supplied by the Supplier, in accordance with clause 7.4 to 7.6.7;

"Conditions" means these terms and conditions;

"Contract" means the contract subject to the Conditions for the provision of Services made between the Supplier and the Customer;

"Equipment" means the equipment listed in the Acknowledgement of Order in respect of which the Supplier will provide the Services;

"Goods" means the any goods, materials and/or other items supplied to the Customer by the Supplier;

"Order" means the Customer's order for Services as set out in the Customer's purchase order form, the Customer's written acceptance of a quotation by the Supplier, or overleaf, as the case may be.

"Price" means the price of Services as set out in the Acknowledgement of Order subject to Clauses 3.3 and 3.3;

"Recommended Specification" means the technical specification of Goods provided by the Supplier to the Customer agreed in writing by both parties;

"Supplier" means Advanced Air (UK) Ltd of Burrell Way, Thetford, Norfolk, IP24 3QU, registered number 1093689;

"Services" means the Services set out in the Acknowledgement of Order and / or Commissioning;

"Site" means the location(s) specified in the Acknowledgement of Order for the provision of the Services;

"Writing" includes manuscript, type-written or printed statement, facsimile transmission and electronic mail.

2 FORMATION OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order 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 descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services 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 law, trade custom, practice or course of dealing.

2.5 No variation to any of these Conditions shall be incorporated into these Conditions unless agreed by the authorised representatives of each of the parties in Writing and the parties acknowledge that these Conditions (with the incorporation of any such variations) constitute the entire agreement between the parties.

2.6 Any typographical, clerical or other error or omission in any sales literature, proposal, price list, acceptance of order, drawings, specifications, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

2.7 Any advice or recommendation given by the Supplier to the Customer in relation to the Services, which is not confirmed in Writing by a duly authorised representative of the Supplier, is followed or accepted by the Customer entirely at the Customer's own risk and the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

3 CONTRACT PRICE

3.1 The Price payable for the Services shall be that set out in the Acknowledgement of Order.

3.2 The Price will not be subject to any retention as commonly understood within the construction industry and will be payable in full in accordance with these Conditions.

3.3 The Supplier shall be entitled at any time and from time to time to increase the Price referred to in Clause 3.1 by giving notice in Writing to the Customer at any time prior to the performance of any part of the Services to reflect any increase in the Supplier's cost in performing the Contract which is due to any factor beyond the Supplier's control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of import/export duties, increase in the cost of labour, materials or costs of manufacture or performance) any change in the Services requirements requested by the Customer or failure to give the Supplier adequate information or instructions.

3.4 The Price is exclusive of any Value Added Tax or any other tax or duty payable and the Customer will bear the cost of any such tax or duty in addition to the Price.

3.5 The Customer will ensure that the Site is prepared to enable the Supplier to perform the Services, and to enable the Customer to accept performance of the same, including, without limitation, arranging access to the Site, providing cranes, hoists or other safety equipment, utilities, other services and workmen and ensuring that any goods supplied by the Supplier have been correctly installed in accordance with relevant instructions and are ready for inspection, testing and commissioning. In the event that the Site is not prepared as required by this Clause 3.5, at the time of performance of the Services, the Supplier may arrange any equipment or services necessary to prepare the Site for performance by the Supplier and acceptance by the Customer and charge the cost of such equipment and services and any associated administration charges, to the Customer in accordance with Clause 6.4.3. Alternatively, the Supplier may elect to reschedule the Services at a mutually convenient date, in which case an additional fee of 100% of the Price will be payable.

3.6 The Customer will indemnify the Supplier against all costs, charges expenses, actions, suits, claims and demands in connection with any equipment or services arranged by the Supplier under Clause 3.5.

3.7 Where the Customer requests Services outside of those referred to in the Acknowledgement of Order then the Supplier shall be entitled to charge for such in accordance with its then current pricing structure.

3.8 The Customer may request a change the date for provision of the Services by giving no less than four weeks' notice to the Supplier, in which the additional fee under Clause 3.5 will not be payable.

4 TERMS OF PAYMENT

4.1 Subject to Clause 4.9.3 or any variation as stated in the Acknowledgement of Order, amounts owing to the Supplier under the Contract shall be paid in Pounds Sterling (£) and shall be due and payable within the agreed Customer credit terms.

4.2 The Supplier reserves the right to grant to and remove from the Customer any credit period agreed in Writing whether in the Acknowledgement of Order, these Conditions or otherwise, by issuing notice in Writing to the Customer. On issue of such notice by the Supplier, the Price shall become payable forthwith in full by the Customer.

4.3 The Supplier reserves the right at any time:

4.3.1 to require the Customer to provide such security or guarantee in respect of any credit advanced to the Customer under this Contract as the Supplier may in its absolute discretion deem necessary; or

4.3.2 to vary the terms and conditions of any credit advanced to the Customer without notice.

4.4 Time for payment of the Price and all other sums due under the Conditions shall be of the essence.

4.5 No payment shall be deemed to have been received until the Supplier has received cleared funds.

4.6 All payments payable to the Supplier under the Contract shall become due immediately upon termination of this Contract.

4.7 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

4.8 The Supplier reserves the right to suspend further deliveries of any performance of Services under this or any other Contract with the Customer in the event of late or non-payment.

4.9 In the event that the Supplier exercises its rights under Clause 4.8 above the Supplier:

4.9.1 is entitled to remove from the Site all its equipment, materials and other property brought onto the Site by its employees;

4.9.2 may charge the Customer the value of the Services performed prior to suspension along with the cost of any items and service supplied in accordance with Clauses 3.5, 3.6 and 3.7; and

4.9.3 all sums under this Clause 4.9 are payable immediately on presentation by the Supplier of an invoice for the same.

4.10 If the Customer fails to pay the Company any sum due pursuant to the Contract the Customer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England accruing on a daily basis until payment in cleared funds is made, whether before or after any judgment.

4.11 The Customer will indemnify the Supplier against all costs and expenses incurred as a result of any breach of the Customer's payment obligations in Clauses 3 and 4 including legal fees in obtaining payment.

5 SUPPLIER'S EQUIPMENT

5.1 The Customer will store, free of charge, all materials, tools, plant machinery and other property brought on to the Site by the Supplier for the purposes of the Contract.

5.2 The Customer will indemnify the Supplier against all loss or damage and against all actions, suits, claims, demands, costs, charges and expenses which may arise from the storage or use of such equipment at the Site.

6 ACCESS TO THE SITE

6.1 The Supplier's employees, subcontractors and agents will be given free and continuous access to the Site and use of services on Site as reasonably required by the Supplier to perform the Services.

6.2 The Supplier will use reasonable endeavours to ensure its employees, subcontractors and agents comply with the Customer's site rules and relevant health and safety standards.

6.3 The Customer will notify the Supplier in advance of any unusual operating conditions which may affect the Supplier's performance of the Services.

6.4 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):

6.4.1 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;

6.4.2 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 under the Contract;

6.4.3 and 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.

7 SUPPLY OF SERVICES AND COMMISSIONING

7.1 The Supplier warrants that the Services will be provided using reasonable skill and care.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. The Supplier shall have no liability for any loss suffered by the Customer due to delay.

7.3 In the absence of any instructions from the Customer, the Supplier shall progress the Contract in a sequence and manner which it thinks fit.

7.4 Provided that the Customer notifies the Supplier in Writing that the Goods are ready for Commissioning, the Supplier will attend the Site to undertake Commissioning of the Goods.

7.5 Time for Commissioning will not be of the essence and in the event that the Goods are found to be faulty during the Commissioning process, the Supplier will use reasonable endeavours to obtain replacement parts, install them and complete Commissioning within a reasonable time.

7.6 The Supplier accepts no responsibility for Commissioning where the Goods are, in the Supplier's opinion:-

7.6.1 Not installed correctly;

7.6.2 Accidentally or deliberately misused by the Customer or any third party;

7.6.3 Not stored indoors and protected from the weather;

7.6.4 Not stored or used at the correct temperature or humidity;

7.6.5 Not stored or used in accordance with the Recommended Specification for the Goods;

7.6.6 Not maintained by the Customer in accordance with the Supplier's instructions;

7.6.7 Damaged by any other act beyond the Supplier's control

8 LIMITATION OF LIABILITY

8.1 The following provisions set out the entire financial liability of the Supplier, including any liability for the acts or omissions of its employees, agents and sub-contractors, to the Customer in respect of:

8.1.1 any breach of these Conditions; and

8.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

8.2 Nothing in these Conditions excludes or limits the liability of the Supplier for:

8.2.1 death or personal injury caused by the Supplier's negligence; or

8.2.2 for the Supplier's fraudulent misrepresentation.

8.3 Subject to condition 8.2:

8.3.1 The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Price; and

8.3.2 The Supplier shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

8.3.3 The Supplier shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Customer whether in the Customer's order or otherwise which are incomplete, incorrect, inaccurate, illegible or which arise from their late arrival or non-arrival, or any other fault of the Customer.

9 TERMINATION

9.1 Either party may terminate the Contract immediately:

9.1.1 by notice in Writing to the other if the other commits any material breach of these Conditions which is not capable of remedy or is capable of remedy and fails to remedy the same within 30 days after being required by Written notice to do so (for the avoidance of doubt, late or non payment will be a material breach of condition); or

9.1.2 without notice if the other party has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or being a body corporate convenes a meeting of creditors or enters into liquidation or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party or if the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

9.2 On termination or expiry of the Contract:

9.2.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

9.2.2 the Customer shall return all of the Supplier Materials and any Deliverables 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 the Contract.

9.2.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, 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.

9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

9.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:

9.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or

9.4.2 the Customer becomes subject to any of the events listed in 9.1.2 or the Supplier reasonably believes that the Customer is about to become subject to any of them.

10 APPLICABLE LAW

10.1.1 This Contract shall be construed in all respects under English Law. Any dispute of difference arising under this Contract shall be subject to the exclusive jurisdiction of the English Courts.

10.1.2 If the Customer and Supplier wish to resolve any dispute or difference arising out of or in connection with this Contract by mediation then any mediation will be conducted in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.

11 CONFIDENTIALITY

Both parties shall keep confidential and shall not without the prior consent in Writing of the other disclose to any third party any technical or commercial information which it has acquired from the other relating to the Services or the Contract.

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

13 DELAY

The Supplier shall not be responsible for any losses or costs incurred by the Customer, including the payment of Liquidated and Ascertained Damages, as a result of any delay caused by the Supplier. The Supplier shall have no responsibility for delay howsoever caused.

14 CANCELLATION CHARGES

If the Customer at any time cancels its order for Services as detailed within an Acknowledgement of Order the Customer shall be liable to pay the Supplier upon cancellation 100% (one hundred per cent) of the Price excluding any costs that can reasonably be avoided.

15 HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996 ("HGCR")

15.1 If the Services provide for the Supplier to carry out construction operations as defined by Section 105 of the HGCR then the following clauses shall apply:

15.1.1 Either the Supplier or Customer has the right to refer any dispute or difference arising under this Contract to adjudication. The adjudication provisions contained within Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998 ("the Scheme") shall apply.

15.1.2 The due date for payment shall be the date of the Supplier's invoice. The final date for payment shall be within the Customers agreed credit terms.

15.1.3 The time limits for serving notices pursuant to Section 110 and Section 111 of the HGCR shall be as specified in Part II of the Scheme.

15.1.4 In default of the Customer serving a valid notice pursuant to Section 111 of the HGCR the Customer shall pay the Supplier the sum invoiced without deduction.

15.1.5 The entitlement to stage payments shall be determined in accordance with the time limits and provisions set out within Part II of the Scheme.

15.1.6 Where a sum due has not been paid by the final date for payment (as defined by clause 15.1.2 above), and no valid withholding notice has been provided, the Supplier shall have the right to suspend performance of the provision of the Services following the giving of a written notice to the Customer giving 7 days' notice of the Supplier's intention to suspend performance. The right to suspend performance shall cease once payment has been made.

16 ASSIGNMENT

16.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

16.2 The Supplier may assign the Contract or any part of it to any person, firm or company.

17 NO THIRD PARTY RIGHTS

Pursuant to Section 1 (2) of the Contracts (Rights of Third Parties) Act 1999 ("the Act") the parties intend that no terms of these conditions may be enforced by a Third Party. For the purposes of this Clause "Third Party" shall have the meaning given in the Act.

18 GENERAL

18.1 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.

18.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, avoidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

18.3 Failure or delay by the Supplier in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

18.4 Any waiver by the Supplier of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

19 NOTICES

19.1 Where stipulated in this Contract communications between the parties about this Contract must be in Writing.

19.2 Delivery, by hand or sent by pre-paid first class post, electronic mail or sent by facsimile transmission shall be:

19.2.1 (in case of communications to the Supplier) to its registered office or such other address as shall be notified to the Customer by the Supplier; or

19.2.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to the address of the Customer set out in the Acknowledgement of Order which forms part of this Contract or such other address as shall be notified to the Supplier by the Customer.

19.3 Communications shall be deemed to have been received:

19.3.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

19.3.2 if delivered by hand, on the day of delivery;

19.3.3 if sent, by facsimile transmission or electronic mail and provided sent to the correct number or email address of the addressee (with correct transmission confirmed), on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.