



Air Control Southern Ltd - Terms and Conditions

1. Interpretation.

In these conditions:

"Business Days" means a day other than a Saturday, Sunday or bank holiday when banks in London are open for business;

"Conditions" means these terms and conditions and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between us;

"Contract" means the contract between us for the supply of the Services on these Conditions;

"Services" means the services which are set out in our order acceptance (as defined below), to be supplied by AIR CONTROL to you. The services shall include electrical and plumbing installation, controls and commissioning only if such work is specifically stated as being included in our order acceptance;

"we", "our" or "AIR CONTROL" means AIR CONTROL Southern Ltd, and "your" or "you" means the person or company to whom we will supply services pursuant to a contract.

2. Basis of an Order/Sale.

- 2.1 We will perform the services in accordance with our written acceptance ("order acceptance") of your order or quote acceptance. All order acceptances are subject to these conditions which shall govern the Contract to the exclusion of any other terms and conditions whatsoever (including any terms or conditions which you purport to apply under any purchase order, confirmation of order, specification or other documents or those implied by trade, custom, practice or course of dealing).
- 2.2 Unless otherwise stated in the quotation, a quotation given by AIR CONTROL shall not constitute an offer, and is only valid for a period of 30 business days from its date of issue.
- 2.3 The contract constitutes the entire agreement between us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of AIR CONTROL which is not set out in the contract.
- 2.4 No variation to these conditions shall be binding unless agreed in writing by our authorised representatives.
- 2.5 Any advice or recommendation given by AIR CONTROL (or our employees, consultants or subcontractors) to you (or your employees, consultants or subcontractors) as to the services which you require which is not confirmed in writing by AIR CONTROL is followed or acted upon entirely at your own risk and accordingly we shall not be liable for any advice or recommendations which is not so confirmed.
- 2.6 Any drawings, designs, descriptive matter or advertising issued by AIR CONTROL, and any descriptive or illustrations contained in any of our documentation, are issued or published for sole purpose of giving an approximate idea of the service described in them and shall not form part of the contract or have any contractual force.



3. Supply of Services.

- 3.1 AIR CONTROL shall supply the services to you in all material respects in accordance with the order acceptance.
- 3.2 You may cancel any order for services at any time prior to commencement of the services provided that you shall indemnify AIR CONTROL in full against all direct losses, damages, charges and expenses incurred by AIR CONTROL as a result of such cancellation.
- 3.3 AIR CONTROL shall use all reasonable endeavours to meet any commencement or performance dates specified in the order acceptance, but any such dates shall be estimates only and time shall not be of the essence.
- 3.4 AIR CONTROL shall have the right to make any changes to the services which are necessary to comply with any applicable law or safety requirements, which are necessary for AIR CONTROL to correctly perform the services or which do not materially affect the nature or quality of services, and we shall notify you in the event of such change and any effect this will have on the price.
- 3.5 The services shall be performed at the location set out in the order acceptance (the "Premises").
- 3.6 You shall;
- a. ensure that the order or quote (as appropriate) is complete and accurate.
 - b. co-operate with AIR CONTROL in all matters relating to the services.
 - c. ensure that the premises and any equipment or machinery upon which the services are to be performed are adequate and suitable for the services and any equipment or machinery to be installed as part of the services (including adequate power supply);
 - d. provide AIR CONTROL, its employees, agents, consultants and subcontractors, with adequate and safe access to premises, as is reasonably required by AIR CONTROL, and ensure the premises are safe and ready for the performance of the services and carrying out of installation, repairs, commissioning and commissioning (as necessary);
 - e. provide AIR CONTROL with a copy of the asbestos registers relating to the premises;
 - f. provide AIR CONTROL with such accurate information and materials as AIR CONTROL may reasonably require in order to perform the services;
 - g. obtain and maintain all necessary licences, permissions and consents which may be required in relation to the services before the date on which the services are to start.
- 3.7 Where continuous operation of a system on which the services are to be, been carried out is a critical requirement of your business, you must ensure that adequate stand-by or back up facilities are in place, adequate essential spare parts are held at the premises and that there is adequate access to the system for repairs to be carried out if necessary.
- 3.8 If AIR CONTROL performance of any of its obligations under the contract is prevented or delayed by any act or omission by you or any other party or your failure to perform any relevant obligation (a "customer default")
- a. AIR CONTROL shall without limiting its 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 it from the performance of any of its obligations to the extent the customer default prevents or delays AIR CONTROL performance of any of its obligations;
 - b. AIR CONTROL shall not be liable for any costs or losses sustained by you arising directly or indirectly from AIR CONTROL failure or delay to perform any of its obligations as set out in this clause 3; and
 - c. you shall reimburse AIR CONTROL on written demand for any costs or losses sustained or incurred by AIR CONTROL arising directly or indirectly from the customer default.



4. Price.

- 4.1 The for the services shall be the price set out in the order acceptance (the "Price"). Any additional services carried out by AIR CONTROL shall be charged in addition to the price.
- 4.2 We reserve the right, at any time to increase the price of the services to reflect any change in the services, any additional work which is required (and was not envisaged on the date of the order acceptance) in order for AIR CONTROL to properly perform the services, any additional work which is required by you or any delay caused by your instructions or your failure to give AIR CONTROL adequate information or instructions.
- 4.3 The price is exclusive of any application value added tax, which you will be liable to pay to AIR CONTROL in addition to the price.

5. Payment Provision.

- 5.1 Unless otherwise agreed, we shall be entitled to invoice you on completion or phasing of the services unless you wrongfully refuse to allow AIR CONTROL to perform the services, the contract is terminated in accordance with clause 12 or the services cease or are suspended in which case we shall be entitled to invoice for the price in full at any time.
- 5.2 Subject to any special terms agreed in writing between us, you shall pay each invoice submitted by AIR CONTROL within 30 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by AIR CONTROL. Receipts of payment will be issued upon request.
- 5.3 We reserve the right to vary the payment terms set out in this clause in the event that we deem it reasonably appropriate following receipt by AIR CONTROL of a report from a credit reference agency.
- 5.4 You shall not be entitled to make any deductions or withholdings, whether by way of any credit, retention, set-off, counterclaim, discount, abatement or otherwise (unless you have a valid court order requiring an amount equal to such deductions to be paid by AIR CONTROL to you before the end of the month after the month in which the invoice is rendered) notwithstanding that performance of the Services may not have taken place.
- 5.5 AIR CONTROL may, without limiting its other rights or remedies, set off any amount owing to it by you against any amount payable by AIR CONTROL to you.
- 5.6 Time for payment of an invoice shall be of the essence of the Contract.
- 5.7 If you fail to make any payment on the due date then, without prejudice to any other right or remedy available to AIR CONTROL, we shall be entitled at our option to:
 - 5.7.1 Terminate the Contract and recover from you any and all costs and losses incurred by AIR CONTROL in connection with the preparation for, or performance of, the Services to the date of cancellation;
 - 5.7.2 Suspend the services and recover from you any and all costs and losses incurred by AIR CONTROL as a result of suspension: and/or
 - 5.7.3 Charge you interest (both before and after any judgement) or the amount unpaid, at the rate of 4 per cent per annum above the base lending rate from time to time of NatWest Bank (National Westminster Bank Plc) accruing on a daily basis until payment is made, whether before or after any judgement.

6. Change Request.

- 6.1 If you identify a requirement for a change to the Service, a change request must be sent to AIR CONTROL detailing the change required ("Request"). On receipt, such Request shall be considered by AIR CONTROL and AIR CONTROL will respond to you in writing confirming what the effect of the change will be ("Revised Order"). Following receipt you shall have 5 Business Days to consider whether to accept the Revised Order.
- 6.2 If the request relates to a matter which is material to the Services and AIR CONTROL (in its absolute discretion) feels that the Services should be suspended pending a final decision in relation to a Request all costs and losses incurred by AIR CONTROL as a result of a suspension shall be recovered from you by AIR CONTROL.



7. Warranty.

- 7.1 Subject to the conditions set out below we warrant to you that the Services will be performed with a reasonable degree of skill and care.
- 7.2 If you feel that the Services have not been carried out in accordance with clause 7.1 you must notify AIR CONTROL in writing within seven (7) days of completion of the Services.
- 7.3 We shall not be liable for a breach of clause 7.1 and you shall not be entitled to withhold payment of any invoice unless you have notified AIR CONTROL in accordance with clause 7.2 of any alleged breach of clause 7.1 in which case you shall only be entitled to retain 2.5% of the total invoice value (excluding VAT), ("Retention") relating to the Service which are the subject of the notification pending the conclusion of the investigation into such matters and the correction of any fault(s) to ensure the Services meet the criteria set out in clause 7.1.
- 7.4 All claims for breach of warranty require a visit to site by AIR CONTROL in order to consider whether the service has been carried out in accordance with clause 7.1.
- 7.5 In the event that the Services were found to comply with clause 7.1 we shall be entitled to invoice you for all costs and expenses incurred by AIR CONTROL in visiting the site and you will be liable to immediately pay any Retention.
- 7.6 Any dispute arising in relation to clause 7.1 shall be dealt with in accordance with clause 11.9 in the event that the parties are unable to reach a mutual agreement.

8. Liability.

- 8.1 Nothing in these Conditions shall or exclude AIR CONTROL liability for:
 - a. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors: or
 - b. fraud or fraudulent misrepresentation.
- 8.2 Subject to clause 8.1:
 - a. AIR CONTROL shall not 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. AIR CONTROL total liability to you in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the price.
- 8.3 Except as set out in these Conditions, all warranties, conditions and other items implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 AIR CONTROL shall not be liable for the acts or omissions of any person or firm present or working at the Site other than its own employees, agents or sub-contractors and AIR CONTROL liability shall be limited so as to be in proportion to its relative contribution to overall fault of AIR CONTROL, you and any other persons in respect of any loss which occurs and our liability shall not be increased by reason of any other person or firm imposing limits of their liability.
- 8.5 This clause 8 shall survive termination of the Contract.



9. Termination.

- 9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- a. the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach:
 - b. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debt within the meaning of section 123 of the insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply:
 - c. the other party commences negotiations with all or any class of its creditors with a view to reschedule any of its debts, or make a proposal for or enters into any compromise or arrangement with its creditors:
 - d. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company):
 - e. the other party (being an individual) is the subject of a bankruptcy petition or order:
 - f. a creditor or encumbrancer of the other party attaches or takes possession of, or distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days:
 - g. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is appointed over the other party (being a company):
 - h. a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver: