

Updated June 2018

THE ACC LIVERPOOL GROUP LIMITED

**STANDARD
TERMS & CONDITIONS
OF PURCHASE AND SUPPLY OF SERVICES**

THE ACC LIVERPOOL GROUP LIMITED

(Company Registration Number: 05204033, Registered Office Address: Kings Dock, Liverpool L3 4FP) ("the Company" or "We")

Terms and conditions of purchase

These are the terms and conditions ("the Terms") on which we will purchase Goods and/or Services and/or hire Equipment from you ("the Supplier"). If you accept our order for the provisions of Goods and/or Services and/or the hire of Equipment ("the Purchase Order") it will be on these Terms and no other terms will apply (including any terms which you seek to impose or which are implied by law, trade, custom, practice or course of dealing). These Terms can only be changed, or other terms agreed, in written correspondence signed by a director or other senior officer of the Company. These Terms are important and should be studied carefully. All these Terms shall apply to the hire of Equipment and the supply of both Goods and Services except where otherwise specified.

1 INTERPRETATION

1.1 The following definitions and rules of interpretation will apply in these Terms.

"Business Day"	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
"Charges"	the charges payable by us for the hire of the Equipment and/or the supply of the Goods and/or Services (as applicable) in accordance with section 3;
"Contract"	the contract between us and you (the Supplier) for the hire of the Equipment and/or supply of Goods and/or Services (as applicable) in accordance with these Terms;
"Commencement Date"	has the meaning given in section 2.2.2;
"Company Materials"	all materials, equipment, tools, drawings, specifications and data provided to you by us in connection with the Contract;
"Compliance Handbook"	the compliance handbook issued by us from time to time;
"Control"	shall be defined as in section 1124 of the Corporation Tax Act 2010, and the expression "Change of Control" shall be construed accordingly;
"Deliverables"	all Documents, products and materials developed by you or your agents, contractors and/or employees as part of or in relation to the provision of the Services in any form, including computer programs, data, reports and specifications (including drafts);

"Document"	includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;
"Equipment"	the equipment (or any part of it) to be hired by us from you as set out in the Purchase Order, including all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it;
"Goods"	the goods (or any part of them) to be purchased by us from you as set out in the Purchase Order;
"Intellectual Property Rights"	any rights affording protection to creative and intellectual effort, including copyright, moral rights, design rights, patents, trade marks and rights in confidential information, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;
"Purchase Order"	our written instruction to hire the Equipment and/or purchase the Goods and/or Services (as applicable), as set out in our standard Purchase Order form and signed by our duly authorised representative;
"Rental Period"	has the meaning given in section 7.11;
"Services"	the services (or any part of them), including without limitation any Deliverables, to be provided by you under the Contract as set out in the Purchase Order;
"Site"	the site at which Equipment and/or Goods are to be delivered or supplied or where Services are to be performed (as applicable) as set out in the Purchase Order or as instructed by us before delivery of the Equipment and/or Goods or provision of the Services (as applicable);
"Specification"	any specification for the Goods and/or Services that is agreed in writing between us and you;
"Supplier"	the person, firm or company who accepts the Purchase Order in accordance with section 2.2; and
"Supplier Personnel"	the employees, officers, agents, sub-contractors or other representatives of the

Supplier who are engaged in the provision of the Equipment, Good and/or Services under the Contract.

- 1.2 Headings do not affect the interpretation of these Terms.
- 1.3 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, replacement, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Words in the singular include the plural and in the plural include the singular.
- 1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 The Contract

- 2.1 The contract with you will comprise our express written Purchase Order, these Terms, anything else we expressly agree under section 2.4, any content imposed by law, but nothing else.
- 2.2 You will be deemed to have accepted our Purchase Order on these Terms on the earlier of:
 - 2.2.1 your return of a formal Purchase Order acknowledgement; or
 - 2.2.2 your commencement of work or delivery pursuant to our Purchase Order, at which point the Contract between us shall come into force ("the Commencement Date") and you will be bound by these Terms.
- 2.3 If you wish to reject our Purchase Order and make a counter-offer you **MUST** therefore reply to our Purchase Order in words explicitly and clearly indicating *rejection*. Equally, if you make a counter-offer which is not clearly labelled as such (or as a rejection of our Purchase Order) no subsequent behaviour of ours, in accepting contractual performance by you, can be taken to imply any acceptance by us of that counter-offer.
- 2.4 If you want us to accept a term of yours, or accept a particular responsibility, or if you wish to rely on a representation we have made, you must therefore obtain our express written agreement, *signed by a director or other senior officer of the Company and referring expressly to these Terms*. We will deal with you in reliance on these Terms, so be aware that our acceptance of contractual performance by you does *not* imply acceptance of any terms that are different to our Terms. You must indemnify us against any consequence of your seeking to rely on any contractual terms, or any statement, understanding or representation which is not contractually agreed as set out in this section 2. For purposes of this section, written agreement can be communicated by pre-paid post, fax or e-mail, save that we never accept small print terms communicated by fax, on grounds of uncertain legibility.
- 2.5 If any of the terms of the Contract conflict with or contradict each other those terms will apply in the following order of priority: (1) any express written agreement from us; (2) our Purchase Order; (3) these Terms.

2.6 We are not contractually bound until we place an express written Purchase Order and then only to the extent of the issues specifically covered by that Purchase Order or in writing signed by a director of the Company.

3 Price

3.1 All Charges will be as stated in our Purchase Order and, unless otherwise stated, will be:

3.1.1 exclusive of any applicable VAT (which will be payable by us subject to receipt of a valid VAT invoice);

3.1.2 inclusive of all charges for packaging, packing, shipping, carriage, installation, insurance and delivery and of any duties or levies other than VAT;

3.1.3 payable in pounds sterling; and

3.1.4 fixed for the duration of the Contract.

3.2 We will be entitled to any discount for prompt payment, bulk purchase or the like normally granted by you to your customers in comparable circumstances.

3.3 If we will be reliant on you for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services to benefit fully from the provision of Equipment, Goods and/or Services ("Follow-on Services") then you will provide those Follow-on Services or procure them to be provided, for at least 36 months following full performance of the Contract, at fair and reasonable prices which take no advantage of our dependence on you for their supply.

4 Payment

4.1 Invoices may be sent to us on, or after, completion of delivery of the Equipment and/or Goods and/or completion of the Services (as applicable). Each invoice must quote the number of our Purchase Order. No sum may be invoiced more than six (6) months after completion of the relevant delivery and/or services (as applicable).

4.2 Unless otherwise stated in the order, we will pay the contract price within thirty (30) days of the end of month in which we receive the correctly rendered invoice.

4.3 You are not entitled to suspend deliveries of Equipment and/or Goods and/or performance of Services (as applicable) as a result of any sums being outstanding.

4.4 We will be entitled to set off against the Charges any money owed to us by you.

4.5 If we fail to make any payment to you by the due date you may charge interest to us on the overdue amount at the rate of 2% a year above the Bank of England's base rate from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. In the event that any payments are disputed in good faith, interest under this section shall only be payable after the dispute

has been resolved, on sums found or agreed to be due, from three (3) Business Days after the dispute is resolved until payment.

- 4.6 You shall maintain complete and accurate records of the time spent and materials used by you in providing the Services, and you shall allow us to inspect such records at all reasonable times on request.

5 Supply of Goods and/or Equipment

- 5.1 You shall ensure that the Goods and/or Equipment:

- 5.1.1 correspond with their description and any applicable Specification;
- 5.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by you or made known to you by us, expressly or by implication, and in this respect we rely on your skill and judgement;
- 5.1.3 where they are manufactured products, are free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery; and
- 5.1.4 comply with all applicable statutory and regulatory requirements, and our other reasonable requirements, relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods and/or Equipment.

6 Specifications

- 6.1 We will be allowed to inspect any Goods and/or Equipment at any time before delivery (and your premises used for manufacture and storage of such Goods and/or Equipment) so long as we request an inspection by reasonable notice. If, as a result of the inspection, we are not satisfied that the quality of the Goods and/or Equipment or the standards of their manufacture, storage or handling conforms with the Contract, you will take such steps as are necessary to ensure compliance. If, after that, we are still not satisfied we can cancel the Contract without penalty.
- 6.2 If, before delivery of the Goods, we notify you in writing of any change in desired specification (including as to quality and time frame for delivery) you will respond as follows. We appreciate that a change may affect the Charges, or may even be unachievable. If the change would *reduce your costs*, the Charges will be reduced to fairly reflect that saving. If the change would *increase your costs* you may notify us promptly, in writing, of a proposed revision of the Charges fairly and proportionately reflecting any unavoidable such increased cost: you and we will then use our reasonable efforts to agree the revised terms in full, including as to the Charges, pending which the Contract variation will not take effect. If the change would for any reason be *unachievable* you may notify us of that promptly and in writing, with reasons: again, both parties will then use reasonable efforts to reach a mutually acceptable Contract variation. Failing notice under one of the two preceding sentences our proposed change will be deemed to have been accepted, and the Contract will be deemed to have been varied with immediate effect to reflect the requested specification change with no increase in the Charges.

What amounts to "prompt" notice for this purpose will depend on feasibility for you and urgency for us, but not in any case later than 48 hours (during Business Days) from our notice of the proposed change. In no event, agreed or not, will we be liable to you in respect of any Contract variation for more than a reasonable and proportionate reflection of such increased costs as you could not reasonably have been expected to avoid. The Charges will not in any circumstance increase except with our express written agreement under, or referring explicitly to, this sub-section.

7 Delivery and risk

- 7.1 You shall deliver the Goods and/or Equipment:
 - 7.1.1 carriage free to the Site;
 - 7.1.2 on the date and time specified in the Purchase Order or as otherwise specified by the Company in advance in writing; and
 - 7.1.3 during the Company's normal hours of business on a Business Day or as instructed by the Company,
during usual business hours.
- 7.2 The date of delivery of any Goods and/or Equipment, will be of the essence of the Contract.
- 7.3 If the Goods and/or Equipment are not delivered on the due date then, without prejudice to any other rights which we may be entitled to the remedies in section 9.4.
- 7.4 A packing note quoting the number of the Purchase Order must accompany each delivery or consignment of Goods and/or Equipment and must be displayed prominently.
- 7.5 You may only deliver Goods and/or Equipment in instalments with our prior consent. Where we agree in advance that Goods and/or Equipment may be delivered in instalments, the Contract is still to be treated as a single contract. If you fail to deliver or perform any instalment we may treat the whole Contract as repudiated.
- 7.6 We may reject any Goods and/or Equipment which are not fully in accordance with the Contract. Acceptance does not occur until we have had a reasonable time and in any case no less than 10 of days to inspect or consider the relevant Goods and Equipment following supply and, in the case of latent defect, a reasonable time and in any case no less than 10 days after the defect becomes apparent.
- 7.7 We will not be bound to return to you any packaging or packing material, but if any relevant requirement for packaging recycling applies, you will take materials back free of charge on request.
- 7.8 Risk of damage to or loss of any Goods passes to us on delivery at the Site.
- 7.9 Property and ownership of any Goods will pass to us on delivery at the Site once the Goods have been offloaded at the Site unless we have paid in whole or in part for the Goods in advance. In that case it will pass to us as soon as the

Goods have (or, if Goods are being assembled for us, each successive component of the Goods has) been appropriated to the Contract.

7.10 If any Goods are delivered to us in excess of the quantities ordered we shall not be bound to pay for the excess and any excess shall be and shall remain at your risk and shall be returnable at your expense.

7.11 The Equipment shall at all times remain your property and the Company shall have no right, title or interest in or to the Equipment (other than the right to possession and use of the Equipment subject to these Terms. The Company shall be responsible for any loss, theft, damage or destruction to the Equipment while it is at the Site during the Rental Period.

8 Supply of Services

8.1 You shall supply the Services to us in accordance with the terms of the Contract.

8.2 You shall meet any performance dates for the Services specified in the Purchase Order or which we notify to you and time is of the essence in relation to any of those performance dates.

8.3 In providing the Services, you shall:

8.3.1 co-operate with us in all matters relating to the Services, and comply with all our reasonable instructions;

8.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in your industry, profession or trade;

8.3.3 use personnel who are suitably skilled and experienced to perform the Services, and in sufficient number to ensure that your obligations are fulfilled in accordance with the Contract;

8.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that we make known to you;

8.3.5 ensure that the Deliverables will be free from defects in workmanship, installation and design;

8.3.6 observe all health and safety rules and regulations and any other security requirements that apply at the Site;

8.3.7 hold all Company Materials in safe custody at your own risk, and maintain them in good condition until returned to us.

9 Warranties, remedies and liability

9.1 You warrant that you:

9.1.1 have and shall maintain at all times all the licences, permissions, authorisations, consents and permits that you need to carry out your obligations under the Contract;

9.1.2 shall (and shall procure that the Supplier Personnel shall) at all times observe all health and safety rules and regulations and any other

security requirements that apply at the Site and all other relevant policies and procedures of the Company;

- 9.1.3 shall (and shall procure that the Supplier Personnel shall) not do or omit to do anything which may cause the Company to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business; and
 - 9.1.4 shall (and shall procure that the Supplier Personnel shall) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, including without limitation the Bribery Act 2010, the Modern Slavery Act 2015 and (to the extent that its applicable) the Data Protection Act 2018 and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (EU) 2016/679).
- 9.2 All warranties, conditions and other terms implied by statute or common law in our favour will apply to any Deliverables bought from you.
- 9.3 You will indemnify us and keep us indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with:
- 9.3.1 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, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Company Materials);
 - 9.3.2 any claim made against us by a third party (including our employees, agents or customers) for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
 - 9.3.3 any claim made against us by a third party (including our employees, agents or customers) arising out of or in connection with the supply of the Goods, as delivered, or the Services.
- 9.4 If you fail to comply with any obligation under the Contract we will be entitled (including any failure to deliver the Goods and/or Equipment and/or perform the Services on time), at our discretion,(without prejudice to any other right or remedy which we may have) to:
- 9.4.1 cancel the Contract in whole or part;
 - 9.4.2 reject the Equipment, Goods and/or Services (in whole or part) and you will not be entitled to receive payment for them;
 - 9.4.3 refuse to accept any further deliveries of the Equipment, Goods and/or Services (in whole or part) but without any liability to us;
 - 9.4.4 where we have paid in advance for Equipment, Goods and/or Services which have not been delivered or provided by you, the have such sums refunded by you;

- 9.4.5 recover from you the cost of obtaining substitute equipment, goods and/or services; and/or
- 9.4.6 in any case, claim such damages as may have been sustained in consequence of your breach or breaches of the Contract.
- 9.5 If any Goods or Services do not comply with all or any Contract requirements we can demand that you carry out at your expense any work necessary to remedy any defect in the Goods or Services and any other necessary work to ensure that the terms of the Contract are fulfilled, or supply replacement goods or services or, at our sole discretion, we can reject the Goods or Services and demand the repayment of any sum already paid for them.
- 9.6 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by you.
- 9.7 Our rights under the Contract are in addition to any rights and remedies implied by statute and common law.
- 9.8 We reserve the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of Equipment, Goods and/or Services ordered if we are prevented from or delayed in the carrying on of our business due to circumstances beyond our reasonable control. We will not be liable to you for any delay or failure to perform any of our obligations under this Contract if the delay or failure was due to a cause beyond our reasonable control.
- 9.9 If any Contract Goods or Services were bought or obtained by you from a third party then any benefits or indemnities that you hold from that third party, in respect of those items, will be held on trust for us.
- 9.10 You will insure yourselves, and keep insured until your performance under the Contract is complete and for 12 months thereafter, against all normal insurance risks relevant to your work for or with us, on terms and for amounts consistent with normal business prudence. You will demonstrate to us the terms and currency of any such insurance on request.

10 Intellectual Property Rights

- 10.1 Unless agreed otherwise in writing, all Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Company Materials) shall be owned by you.
- 10.2 You grant to us, or shall procure the direct grant to us of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use, copy, modify and to sub-license the Deliverables and any other products of the Services (excluding Company Materials) for the purpose of receiving and using the Services and the Deliverables.
- 10.3 We grant to you a fully paid-up, non-exclusive, royalty-free non-transferable licence to use the Company Materials for the term of the Contract for the purpose of providing the Services to us.
- 10.4 All Company Materials are and shall remain our exclusive property.

11 Termination and consequences of termination

- 11.1 We may cancel the Contract (for all or part only of the Equipment, Goods and/or Services (as applicable)) by giving written notice to you at any time before

delivery, in which case we shall pay you the price for the cancelled Equipment, Goods and/or Services (as applicable) less any cost savings accruing to you by reason of the cancellation (except in the case of standard or stock items, in which case we shall have no liability to you in respect of any cancellation up until the time of delivery).

- 11.2 We may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the Contract without any liability to you if you breach its terms, or if your business fails, or there is a change of Control.
- 11.3 Your business will be treated for the purpose of section 11.2 as having failed if:
- 11.3.1 you make any voluntary arrangement with your creditors;
 - 11.3.2 (being an individual or firm) you become bankrupt;
 - 11.3.3 (being a company) you become subject to an administration order or go into liquidation;
 - 11.3.4 any third party takes possession of, or enforces rights over, any of your property or assets under any form of security ;
 - 11.3.5 you stop or threaten to stop carrying on business;
 - 11.3.6 you suffer any process equivalent to any of these, in any jurisdiction; or
 - 11.3.7 we reasonably believe that any of the events mentioned above is about to occur and we notify you accordingly.
- 11.4 Any right of cancellation or suspension under this section is additional to any rights available to us under the law of any relevant jurisdiction.
- 11.5 Any rights and duties accrued to us prior to termination shall not be affected by the termination of the contract, however the termination arises. Any conditions that have effect after termination shall continue to be enforceable after termination.
- 11.6 On termination of the Contract, you shall immediately deliver to us all Deliverables whether or not then complete, and return all Company Materials. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned or delivered, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

12 Enforcement

- 12.1 You will keep strictly confidential all information which you learn about us, our business or our customers, and use that information only for the performance, in good faith, of your obligations to us under the Contract. By way of illustration only, you may not use such information to help our competitors, poach our staff or disparage our reputation. This restriction will apply until the fifth anniversary of the Commencement Date, and does not apply to information which was demonstrably public knowledge at the time of usage by you.
- 12.2 Our relationship is as independent contractors only, not as partners or as principal and agent.
- 12.3 The Contract is non-assignable by you. It is assignable by us only to a group company, that is a company in the same ultimate beneficial ownership. You

may not sub-contract or delegate performance under the Contract without our prior consent, such consent not to be unreasonably withheld or delayed.

- 12.4 You will procure that none of the Supplier Personnel behaves in a way which, had the behaviour been yours, would have breached the Contract. We hold the Contract on trust for ourselves and all associates of ours, and the Contract is made for the benefit of all of them so that you will be liable for damage caused to our associates as well as ourselves. Our respective associates for this purpose are any parent company or ultimate controlling shareholder and any company owned by either.
- 12.5 No waiver by us of any breach of Contract by you will be considered as a waiver of any subsequent breach of the same or any other provision, or as a release of the provision which you breached. No delay by us in enforcement, and no toleration shown by us, is to imply any waiver or compromise of our rights.
- 12.6 If any provision of these Terms is held by competent authority to be invalid or unenforceable in whole or in part the validity of the other Terms and of the remainder of the provision in question will not be affected. Every provision is severable from every other.
- 12.7 Any written notice under these Terms will be deemed to have been sufficiently served if posted by pre-paid official postal service, or if sent by fax then on receipt of successful answerback, or if sent by e-mail (but in this case only on evidence of successful transmission and only if the parties have regularly communicated on contract matters by that e-mail route).
- 12.8 The Contract is between us and you and no other person shall have any right to enforce any of its terms.
- 12.9 The Contract will be governed by the law of England, and you submit to the non-exclusive jurisdiction of the English courts.