

# PILOT GROUP INFRASTRUCTURE LIMITED T/A HILCLARE - TERMS AND CONDITIONS OF SALE

**YOU SHOULD READ THESE TERMS CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION ABOUT THE WAY IN WHICH YOU AGREE TO CONTRACT WITH US FOR THE PURCHASE OF PRODUCTS AND/OR SERVICES. YOUR ATTENTION IS DRAWN IN PARTICULAR TO THE SECTION CONCERNING OUR LIABILITY TO YOU (CLAUSE 3).**

## **A. GENERAL TERMS AND CONDITIONS TO APPLY TO ALL CONTRACTS**

### **1. About these Terms and Conditions of Sale and placing an order**

1.1 These Terms and Conditions (**Terms**) will apply to any contract between us for the sale of **Products** (as described in the Order Confirmation) or supply of Services to you (**Contract**). Please read these Terms carefully, and check that the details on the Order Confirmation issued to you (**Order Confirmation**) are complete and accurate.

1.2 References in these Terms to **we, us** and **our** are to Pilot Group Infrastructure Limited t/a Hilclare (company number 09101549).

1.3 Please check your Order Confirmation carefully and let us know if there are any errors on the Order Confirmation. Unless you notify us in writing to the contrary within 2 days of our issuing the Order Confirmation, you are offering to purchase Products and/or Services from us at the prices set out on the Order Confirmation.

### **2. Price and payment**

2.1 The prices of the Products and/or Services will be as quoted in the Order Confirmation. All payments must be made in the currency detailed in the Order Confirmation without set off or deduction by electronic transfer to a bank specified by us. Time for payment shall be of the essence.

2.2 The price of Products and/or Services excludes VAT at the applicable current rate chargeable in the UK for the time being.

2.3 You will be liable to pay any relevant delivery charges as may be set out on your Order Confirmation.

2.4 Unless otherwise agreed in writing, the price for all Products and/or Services shall be payable prior to delivery of the Products.

2.5 If we approve your application for a credit account, we may set such credit limit, and may also vary any credit limit, as we deem appropriate from time to time. In addition, we reserve the right, at our discretion and without prior written notice, to immediately terminate or suspend availability of the credit account if: (a) any of the circumstances detailed at clause 8.7 arise; or (b) any other circumstances arise which, in our view, suggest it would be prudent to do so and, in each case, all amounts outstanding from you to us will become immediately due and payable.

2.6 If you do not make any payment due to us by the due date for payment, we may charge interest to you on the overdue amount at the rate of 3% a year above the base lending rate of The Royal Bank of Scotland plc 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. You must pay us interest together with any overdue amount.

### **3. Our liability**

3.1 Subject to clause 3.3, our maximum aggregate liability will be limited to the total amount which we have received from you under the Contract.

3.2 We will have no liability to you for any of the following (in each case, whether direct, indirect or consequential): (a) loss of profit; (b) loss of revenue or loss of business; (c) loss of goodwill, loss of reputation or loss of opportunity; (d) loss of anticipated savings or loss of margin; (e) loss of bargain; (f) liability of you to third parties; (g) loss of use or value of any data or software; (h) wasted management, operational or other time; (i) loss or damage arising out of any failure by you to keep full and up to date security copies of any computer program and data held or used by or on behalf of you; or (j) indirect, consequential or special loss, subject always (in each case) to clause 3.3.

3.3 Nothing in this Contract will operate to exclude or restrict one party's liability (if any) to the other: (a) for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977); (b) for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; (c) for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

3.4 Each party agrees to use its reasonable endeavours to mitigate the consequences of any breach by the other and the losses, costs, expenses, claims and demands it may claim as a result of that breach including, for the avoidance of doubt any claim under any of the indemnities contained in this Contract. This will not in any way restrict or reduce any obligation to mitigate loss or damage which may exist at common law.

3.5 The exclusions from, and limitations of, liability contained in this Contract will apply after as well as before the date of termination of the Contract.

3.6 The exclusions from, and limitations of, liability set out in this clause 3 will be considered severally. The invalidity or unenforceability of any one sub-clause or clause will not affect the validity or enforceability of any other sub-clause or clause and will be considered severable from each other.

3.7 Subject to clause 3.3, all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from the Contract.

3.8 Notwithstanding any other term of this Contract we will not be in breach of this Contract to the extent our failure to perform or delay or defect in performance of our obligations under this Contract arises as a result of: (a) any breach by you of your obligations contained in this Contract; (b) us relying on any incomplete or inaccurate data provided by a third party; or (c) us complying with any instruction or request by you or one of your employees or agents.

### **4. Events outside our control**

4.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by an Event Outside Our Control.

4.2 An **Event Outside Our Control** means any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

4.3 If an Event Outside Our Control takes place that affects the performance of our obligations under a Contract: (a) we will contact you as soon as reasonably possible to notify you; and (b) our obligations under a Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects our delivery of Products to you, we will arrange a new delivery date with you after the Event Outside Our Control is over.

4.4 For the avoidance of doubt, you will continue to pay the invoices in accordance with clause 2.4 in respect of any Products and/or Services which we continue to supply notwithstanding the occurrence of an Event Outside Our Control.

### **5. Other important terms**

5.1 We may transfer our rights and obligations under a Contract to another organisation. You may only transfer your rights or your obligations under these Terms to another person if we agree in writing.

5.2 The Contract is between you and us. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties Act) 1999 or otherwise.

5.3 Each of the clauses of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining clauses will remain in full force and effect.

5.4 If we fail to insist that you perform any of your obligations under these Terms or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

5.5 These Terms are governed by English law. This means a Contract and any dispute or claim arising out of or in connection with it will be governed by English law. You and we both agree to that the courts of England will have exclusive jurisdiction.

# PILOT GROUP INFRASTRUCTURE LIMITED T/A HILCLARE - TERMS AND CONDITIONS OF SALE

## **B. TERMS AND CONDITIONS RELATING TO SALE OF PRODUCTS**

### **6. Products**

6.1 The images of the Products on our Website and in our catalogue or brochure are for illustrative purposes only. Although every care has been taken to ensure that the photographic representation, description and specification of each Product is accurate, we cannot guarantee that the printed pictures accurately reflect the Products, and your Products may vary slightly from those images.

6.2 You shall be responsible for ensuring the completeness and accuracy of the terms of any Order Confirmation, including any associated design and/or specification. Whilst we will endeavour to provide you with assistance and advice (if requested) relating to which products to purchase, all information or advice provided by us can only be (and is intended to be) general in nature and you should not rely on it in connection with the making of any decision. We do not guarantee the accuracy of such information and we will not be liable for any loss or damage suffered by you as a result of relying on such information or advice.

6.3 If the Products are to be manufactured, built or any process is to be applied to the Products by us in accordance with a specification submitted, or requested, by you, or the Products are to be marked with any trade mark at your request, you shall indemnify and hold us harmless in full and on demand against: (a) all loss, damages, costs (including legal costs) and expenses awarded against, or incurred by, us in connection with, or paid or agreed to be paid by us in settlement of, any claim for infringement of third party intellectual property rights arising therefrom; and (b) any other liability whatsoever which results from our use of your specification or the marking of the Products or from the sale or supply of such Products.

### **7. Delivery**

7.1 Your order will be fulfilled within the delivery period agreed, unless there is an Event Outside Our Control (see clause 4), provided always that time for delivery shall not be of the essence. If we are unable to meet the delivery date because of an Event Outside Our Control, we will contact you to agree a revised delivery date.

7.2 Delivery of the Products shall be made FCA (our warehouse) (Incoterms 2010) (unless otherwise agreed by us in writing).

7.3 Where the Products are delivered to a place other than our warehouse, you shall provide (at your own cost) all necessary labour and equipment to enable the Products to be safely unloaded at the alternative delivery address.

### **8. Title and risk**

8.1 The risk in the Products shall pass to you on completion of delivery.

8.2 Title to the Products shall not pass to you until the earlier of: (a) our having received payment in full (in cash or cleared funds) for the Products and any other products that we have supplied to you, in which case title to the Products shall pass at the time of payment of all such sums; and (b) you reselling the Products, in which case title to the Products shall pass to you at the time specified in clause 8.4.

8.3 Until title to the Products has passed to you, you shall: (a) ensure the Products remain readily identifiable as our property; (b) not remove, deface or obscure any identifying mark or packaging on the Products; (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and (d) notify us immediately if you become subject to any of the events listed in clause 8.7.

8.4 Subject to clause 8.5, you may resell or use the Products in the ordinary course of your business (but not otherwise) before we receive payment for the Products. However, if you resell the Products before that time: (a) you do so as principal and not as our agent; and (b) title to the Products shall pass from us to you immediately before the time at which resale by you occurs.

8.5 If, before title to the Products passes to you, you become subject to any of the events listed in clause 8.7, then, without limiting any other right or remedy we may have: (a) your right to resell the Products or use them in the ordinary course of its business ceases immediately; and (b) we may at any time: (i) require you to deliver up all Products in your possession that have not been resold, or irrevocably incorporated into another product; and (ii) if you fail to do so promptly, enter any premises of yours or of any third party where the Products are stored in order to recover them.

8.6 If you fail to accept delivery of the Products, we will be entitled to charge you for all related costs and expenses (including insurance) associated with storing the Products until delivery takes place.

8.7 Without limiting any of our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you: (a) do not make any payment due to us by the due date for payment (b) take any step or action in connection with your entering administration, provisional liquidation or any composition or arrangement with your creditors, 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, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; (c) suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or (d) your financial position deteriorates to such an extent that, in our opinion, your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.

### **9. Warranty**

9.1 The provisions of this clause 9 are subject to the provisions of clause 3.

9.2 The Products supplied to you by us will be: (a) of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and (subject to clause 9.6 below) fit for purpose; (b) free from defects in design, material and workmanship, and will remain so for: (i) in the case of lighting products, such period of time after delivery as is indicated on the relevant product datasheet (or in our product brochure or on our website); or (ii) in the case of battery products, a period of 12 months after delivery; and (c) compliant with all applicable statutory and regulatory requirements.

9.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the agreement.

9.4 The warranty detailed at clause 9.1(b) (the **Warranty**) does not apply to any defect in the Products arising or resulting from: (a) fair wear and tear; (b) the location in which the Products are used or are to be used (including, for the avoidance of any doubt, the use of LEDs in areas in which chemicals are present), or for the method of installation; (c) any maintenance or repair undertaken (other than by us); (d) abnormal storage or working conditions; (e) failure to use the Products in accordance with the technical specification and/or user instructions; (f) damage, accident, negligence and/or vandalism (in each case, by you or by any third party); and (g) any third party interference with the Products.

9.5 We will not be responsible for any loss or damage caused by an unexpected surge of electricity to the Products once they have been installed.

9.6 We do not give any warranty that the Products shall be suitable for any particular purpose for which you intend to use them save where we have expressly accepted responsibility for such suitability in writing.

9.7 The Warranty is extended only to the first end-user of the Products and is not transferable.

### **10. If there is a problem with the Products**

10.1 The provisions of this clause 10 are subject to the provisions of clause 3.

10.2 In the unlikely event that there is any defect with the Products for which we are liable you agree that you will: (a) contact us and tell us as soon as reasonably possible and in any event within the timescale required by our standard returns process from time to time (**Returns Process**) (a copy of which is available upon request); (b) comply with our Returns Process; and (c) provide us with all information and assistance which we may reasonably require to investigate the defective Products.

10.3 Your sole remedy in respect of any defect with the Products will be as set out in our Returns Process. You will have no right to terminate this Contract in respect of any defect with the Products.

## **C. TERMS AND CONDITIONS RELATING TO THE SUPPLY OF SERVICES**

11. In the event that we provide you with any services (**Services**) we will make every effort to complete the Services on time. However, there may be delays due to an Event Outside Our Control. See clause 4 for our responsibilities when an Event Outside Our Control happens.

11.1 If we prepare specifications and/or drawings and/or designs for you, these will be based on information provided by you but you will be responsible for ensuring that such specifications, drawings and designs reflect your requirements, as discussed with us.