

Hodgson Acoustics Company Limited
Terms and Conditions – Supply and Install

1. Interpretation

1.1 In these Terms:

'Acknowledgement of the Quotation' means a countersigned duplicate of the Quotation signed by the Customer or in the absence of a signed quotation the Company's Sales Order acknowledgement (incorporating these terms and conditions and referencing the Quotation and any other documents) following receipt of either: a purchase order, contract, sub-contract, instruction or acceptance of the Quotation, from the Customer.

'Additional Works' has the meaning given in clause 12.1.

'Company' means HODGSON ACOUSTICS COMPANY LIMITED (registered in England and Wales under number 11531531).

'Completion Date' the agreed date for completion of the Works.

'Contract' means the contract for the carrying out of the Works, consisting of the Quotation, any Acknowledgement of the Quotation, if relevant, (and any documents referred to therein) and these Terms.

'Customer' means the 'person' 'firm' or 'company' named in the Quotation as the customer.

'Goods' means the goods (including any instalment of the goods or any parts for them), which the Company is to supply as set out in the Quotation.

'Material' means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works and all updated, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose.

'Quotation' means the Company's quotation for the Works.

'Permitted Uses' means the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, building information modelling and repair of the property or properties which are the subject of the Works.

'Price' has the meaning given in clause 4.1. plus any additional payment that the Customer is required to make to the Company pursuant to these terms and conditions.

'Site' means the site where the Works are carried out.

'Terms' means the standard terms and conditions set out in this document and (unless the context otherwise requires) including any special terms and conditions agreed in Writing between the Customer and the Company and/or as set out in the Quotation.

'Works' means the supply of the Goods and, where stated as such in the Quotation, the installation of the Goods and any other additional works agreed to be carried out under the Contract.

'Writing' includes e-mails, cable, facsimile transmission and comparable means of communication.

1.2 Any reference in these Terms to any provision of a statute, regulation, order or other form of legislation is construed as a reference to that provision as amended re-enacted or extended from time-to-time.

1.3 A reference to a party includes its personal representatives, successors or permitted assigns.

1.4 The headings in these Terms are for convenience only and shall not affect their interpretation.

2. Company's Obligations

2.1 These Terms shall govern the Contract to the exclusion of any other terms and conditions.

2.2 The Company shall carry out the Works in a good and workmanlike manner and complete the Works in accordance with the Contract using materials and workmanship herein specified or otherwise of a good and suitable standard and which are not generally regarded as deleterious.

2.3 If the Works include any design to be carried out by the Company, any such design shall be carried out employing the standards of reasonable skill and care to be expected of a properly qualified and competent engineer or its equivalent profession experienced in carrying out work of a similar scope, nature, timescale and complexity to the Works.

2.4 No variation to the Contract shall be binding unless agreed in Writing between a Director of the Company and the Customer.

2.5 The Company may appoint sub-consultants and/or sub-contractors to perform any or all of the Works, but shall be liable for the acts and defaults of all such sub-consultants and/or sub-contractors as if they were its own acts and defaults, and shall not be relieved of any obligation hereunder by reason of the use or appointment of sub-consultants and/or sub-contractors.

2.6 The Company's employees or agents are not authorised to make any representations concerning the Works unless confirmed by a Director of the Company in Writing. In entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of, any such representations, which are not so confirmed.

2.7 Any typographical, clerical or other error or omission in any document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3. Orders and Specifications

3.1 The Customer shall be responsible to the Company for giving the Company any necessary information relating to the Works within a sufficient time to enable the Company to perform the Works in accordance with the Contract.

3.2 The quantity, quality and description of and any specification for the Goods and/or the Works shall be those set out in the Quotation and unless otherwise expressly set out therein the Company gives no warranty that the Goods and/or the Works will conform to any particular standard specification or test. Illustrations, photographs or descriptions whether in catalogues, brochures or other documents issued by the Company are intended as a guide only and shall not be binding on the Company.

3.4 No Contract shall be cancelled or terminated by the Customer except with the agreement in Writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of such cancellation or termination.

3.5 In addition to any other rights and remedies which the Company may have, the Company may at any time by notice in Writing to the Customer immediately terminate the whole or any part of the Company's engagement under the Contract without any liability to the Customer for any sums whatsoever incurred because of such termination.

4. Price

4.1 The price of the Goods and/or the Works shall be the price(s) set out in the Quotation. The price(s) within the Quotation is/are based on the rates of labour, working hours and conditions, cost of materials, transport, insurance and overhead charges applicable at the date of the Quotation. Unless otherwise stated in the Quotation the price is valid for 30 days from the date of the Quotation or until earlier acceptance by the Customer, after which time the price may be altered by the Company without notice to the Customer.

4.2 Unless otherwise stated in the Quotation or otherwise agreed in writing between the parties, the Price does not include the cost of the provision of any additional contract documents such as collateral warranties. For the avoidance of doubt additional contract documents such as collateral warranties, will be provided at the Company's discretion and no such documents (including any requested warranties) will be provided unless and until the Price has been paid in full. In the event any warranty (or any other document) is supplied to the Customer before the Price has been paid in full to the Company, the Customer will have no right to rely on such document(s) provided unless and until the Price has been paid in full.

4.3 The Price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay the Company.

4.4 The Price, and or any amounts quoted or invoiced are in £GBP unless specifically stated otherwise in the Quotation or agreed otherwise in writing by a Director of the Company.

4.5 Unless otherwise stated in the Quotation, for deliveries outside of the United Kingdom the cost of Import Duties and Taxes are specifically excluded and are to be arranged and paid for by the Customer.

5. Terms of payment

5.1 Subject to any alternative payment terms set out in the Contract, the Price or any part thereof is due for payment on the date that the Customer receives each invoice (the "Due Date").

5.2. Within five days of the Due Date the Customer shall give a payment notice to the Company specifying the amount of the payment to be made as at the Due Date and the basis on which such amount is calculated (the "Payment Notice").

5.3 The final date for payment of each invoice shall, unless otherwise stated in the Quotation, be 30 days after the Due Date (the "Final Date for Payment").

5.4 If the Customer intends to pay less than the amount stated in the Payment Notice (or, in the absence of a Payment Notice, the

applicable invoice) then the Customer shall give a pay less notice to the Company not later than seven days before the Final Date for Payment specifying the amount of the payment to be made as at the date of the pay less notice and the basis on which such amount is calculated.

5.5 In the event of a failure to pay any sum due to the Company by the Customer by the Final Date for Payment, the Company shall have the right to:

5.5.1 suspend, following 7 days' notice in writing, all or part of the Works. Upon the ending of a suspension the Customer shall pay the Company all reasonable costs of the suspension and shall grant the Company an extension of time to the Completion Date for the period of the suspension;

5.5.2 charge the Customer interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 for the period of late payment.

5.6 All amounts due under the Contract shall be paid by the Customer to the Company in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5.7 The Company may at any time, without notice to the Customer, set off any liability of the Customer to the Company against any liability of the Company to the Customer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Company of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

5.8 The Company shall be entitled to withhold any part of the Works until the Price or part of the Price has been paid in full by the Customer in accordance with this clause 5.

6. Credit References

The Contract is strictly subject to the Company being satisfied as to the Customer's credit references and the Company may, in its absolute discretion, refrain from carrying out the Works or any part of them until such time as the Customer provides acceptable references or pays the Price in full together with any outstanding amounts which are due to the Company under the Contract or any other Contract entered into with the Customer.

7. Delivery of the Goods

7.1 The Company shall not be responsible for any damage to the Goods (a) sustained during offloading and/or (b) occurring during storage by the Customer.

7.2 All Goods shall be deemed accepted by the Customer unless written notification is received by the Company within five business days of delivery of the Goods to the Customer.

7.3 Where the Goods are to be delivered in instalments any failure by the Company to deliver any one instalment in accordance with the Contract shall not entitle the Customer to treat the Contract as a whole as repudiated.

7.4 Time for delivery shall not be of the essence and delay in delivery does not give the Customer the right to terminate the Contract. The Company shall not be responsible for any loss, damage or expense resulting from such delay howsoever caused unless previously agreed in writing.

7.5 The time stipulated for delivery shall mean the time for delivery ex-factory notwithstanding that the place for delivery may be elsewhere and unless otherwise agreed in writing by the Company shall be reckoned from the date of receipt of the Customer's Acknowledgement of the Quotation and full information sufficient for the Company to commence manufacture including but not limited to: a) approval in writing by the Customer of the Company's general arrangement drawing(s) for the Works b) receipt of any agreed advance payments including those due under clause 6.

7.6 If the Customer fails to take delivery of the Goods or fails to give the Company instructions to enable delivery to be made within 14 days after notification of delivery, the Goods shall remain at the sole expense and risk of the Customer who shall arrange for suitable storage. If the Customer fails to arrange such storage, the Company may in its absolute discretion store the goods on the Customer's behalf at the Customer's sole risk and expense at the Company's premises or at such other place and on such terms as it considers fit, and the Customer shall pay the Company on demand a storage charge to cover losses and expenses suffered and incurred in storing, insuring, transporting and handling the Goods. In no event shall these Terms operate to relieve the Customer of making payment as though such default or delay had not occurred.

7.7 If the Customer fails to take delivery or giving instructions as to delivery of the Goods or informs the Company that it no longer wishes to take delivery of the Goods or wishes to terminate the Contract, then the Customer shall pay to the Company such charge as shall be necessary to cover losses and expenses suffered and incurred through the failure of the Customer to accept delivery of the Goods or caused or occasioned or incidental on the termination of the Goods by the Customer including all sums which the Company may have paid or shall have to pay to any third party.

8. Property and Risk

8.1 All Goods are at the Customer's risk from the time they leave the Company's factory or at the time at which the Company notifies the Customer that the Goods are available for collection.

8.2 Notwithstanding delivery and the passing of risk of the Goods, all Goods supplied by the Company remain the property of the Company until the Price is paid in full by the Customer.

8.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer, and third parties, and properly stored, protected, insured and identified as the Company's property.

8.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Company may at any time require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, enter onto any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

9. Lien

The Company shall be entitled to a general lien on any property of the Customer in its possession in respect of any sums due from the Customer.

10. Packing

The Company reserves the right to demand payment of any sums additional to the Price in relation to extra packing materials necessary to ensure that the Goods arrive at the Customer's premises in good condition.

11. Installation

11.1 Installation of the Goods is only included in the Contract if stated in the Quotation.

11.2 Where the Contract does include installation of the Goods, the following requirements must be met by the Customer:

11.2.1 Unless previously agreed in writing by the Company, the Customer is responsible for offloading and positioning of equipment adjacent to the working area.

11.2.2 The working area must be cleared of all plant, materials, debris and any other obstructions.

11.2.3 Unless otherwise agreed in the contract, free uninterrupted access is to be provided to the working area during normal working hours 0830 am to 1700 pm Monday to Friday and installations outside these hours are charged at the Company's prevailing overtime rates.

11.2.4 Unless stated otherwise in the Contract, the Customer is to provide: free power for hand tools, appropriate task lighting, storage, protection during and following completion of the Works, hoisting, skips, access scaffold and all and any other attendances required by the Company.

11.2.5 The Customer is to provide free welfare facilities including but not limited to washing, toilet and drying facilities.

11.2.6 The Company may charge the Customer for any additional cost or expense incurred by the Company as a result of any delay or difficulty in commencing, continuing with or completing the installation for reasons outside the Company's reasonable control.

11.2.7 In the case of Concrete Floating Floor systems unless previously agreed in writing, the installation work excludes the provision and pouring of concrete which shall be provided and/or executed by others.

11.2.8 Unless previously agreed in writing by the Company, all building work is excluded.

11.2.9 The Customer undertakes to maintain the working area and installation workplace in a safe condition and to comply with all applicable laws governing workplace health and safety.

12. Variations

12.1 The Customer may, without invalidating the Contract, request an addition to or omission from or other change in the Works ("Additional Works"). As soon as reasonably practicable after receiving such a request, the Company shall provide the Customer with a written estimate of cost of the Additional Works. Such estimate is deemed to be accepted by the Customer unless disputed in Writing within 7 days of the date of the estimate. The Company shall in addition be entitled to reasonable direct loss and/or expense incurred by the Customer or its agents as a result of any requested change.

12.2 The Company is under no obligation whatsoever to accept a request to carry out Additional Works and may refuse to do so

without giving a reason to the Customer. Any such refusal shall not invalidate the Contract.

13. Extension to Completion Date

13.1 If it becomes apparent that the Works will not be completed by the Completion Date for reasons beyond the reasonable control of the Company, including (but not limited to) compliance with any instruction of the Customer, then the Company shall notify the Customer in writing who shall make such extension of time for completion as may be reasonable. The Customer shall confirm in writing the extension of time granted and the revised Completion Date in line with the delay caused.

13.2 In the event of an extension of time to the Completion Date in accordance with clause 13.1, the Customer shall pay to the Company the additional costs incurred by the Company (calculated where relevant in accordance with the rates in the Order) in addition to the Price. Such additional costs may include, but are not limited to, increased costs of labour, supervision, equipment or materials, reasonable overhead and profits).

14. Intellectual Property Rights

14.1 The Company owns all intellectual property rights (including copyright) relating to the Material it produces, and these rights shall remain vested in the Company.

14.2 The Company grants to the Customer from the date of the Contract an irrevocable, royalty-free, non-exclusive licence to use and to reproduce all Material prepared by, or on behalf of, the Company for any purpose relating to the property or properties that are the subject of the Works, including any of the Permitted Uses.

14.3 The Company shall not be liable for the use of the Material for any purpose other than that for which it was prepared and/or provided.

15. Insurance and Liability

15.1 The Customer shall ensure that the Goods are covered by the insurance policy of the Customer or other third party. Such insurance must be 'all risk' insurance on the full value of the Works together with materials delivered to the Site, materials stored at a temporary storage location away from the Site, and materials in transit.

15.2 Subject to clause 15.5, the Company's total liability to the Customer 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 in no circumstances exceed the total of the price(s) within Quotation. If the first sentence of this clause 15.2 is held to be invalid, the Company's total liability to the Customer in respect of all losses arising under or in connection with the Contract shall in no circumstances exceed the level of professional indemnity insurance as stated in the Quotation or clause 15.3 whichever is the greater.

15.3 In relation to any design to be carried out by the Company, the Company shall maintain professional indemnity insurance for an amount of at least that figure as stated in the Quotation or, in the absence of such figure, £2,000,000 (two million pounds) for any one claim for a period beginning on the date of the Contract and ending six years after completion of the Works, provided that such insurance is available at commercially reasonable rates and terms.

15.4 Nothing in the Contract shall limit or exclude the Company's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be limited or excluded by applicable law.

15.5 Subject to clause 15.4, the Company shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill;
- (f) loss of use or corruption of software, data or information; and
- (g) any indirect or consequential loss.

15.6 If:

15.6.1 the Customer gives notice in Writing to the Company within 12 months of completion of the Works and within a reasonable time of discovery that some or all of the Goods do not comply with the Contract; and

15.6.2 the Company is given a reasonable opportunity of examining such Goods; and

15.6.3 the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Customer's cost, the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

15.7 The Company shall not be liable for the Goods' failure to comply with the Contract in any of the following events:

15.7.1 the Customer makes any further use of such Goods after giving notice in accordance with Clause 15.6.1;

15.7.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

15.7.3 the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;

15.7.4 the Customer alters or repairs the Goods without the written consent of the Company;

15.7.5 the defect arises as a result of fair wear and tear, wilful or accidental damage, carelessness, negligence, or abnormal storage or working conditions, defective foundations or other elements of the building, faulty erection of the Goods (unless erected by the Company); or

15.7.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

15.8 Except as provided in this Clause 15, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the Contract.

15.9 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 Contract.

15.10 These Terms shall apply to any repaired or replacement Goods supplied by the Company.

15.11 The Company's employees or agents are not authorised to make any representations concerning the Works unless confirmed by a Director of the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed in writing by the Company.

15.12 In the case of goods not manufactured by the Company, the Company's liability shall be limited to such guarantee as it may receive from the manufacturers.

15.13 Figures for the performance of the Works are based on the Company's experience and are such as the Company expects to obtain on testing the goods, subject to a reasonable margin of error. They are also estimated on the condition that any figures and information given to the Company by or on behalf of the Customer is accurate.

16. Dispute Resolution

16.1 If a dispute or difference arises between the Customer and Company the parties agree to meet in good faith to attempt to resolve the dispute or difference that exists between them.

16.2 If any dispute or difference concerning the Works shall arise between the Customer and Company, such dispute or difference may be referred to adjudication such adjudication to be conducted in accordance with the Scheme for Construction Contracts Regulations (England and Wales) 1998 (as amended). For the purposes of such adjudication the parties agree that the nominating body for appointment of the adjudicator shall be the President or Vice President of the Royal Institute of Chartered Surveyors.

16.3 where the Works are carried out or delivered outside of the United Kingdom and adjudication does not apply as clause 16.2 and the dispute cannot be resolved, the Company may at its absolute discretion require that the dispute shall be settled by final and binding arbitration. The arbitration shall be conducted in accordance with the Arbitration Rules of the London Court of International Arbitration (LCIA), which rules are deemed to be incorporated. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. The number of arbitrators shall be one. The seat, or legal place, and location of arbitration shall be London, UK. The language of the arbitral proceeding shall be English. Alternatively the Company may at its absolute discretion require that the dispute is resolved in the English courts.

17. Governing law and Jurisdiction

17.1 The governing law of the Contract shall be the law of England and Wales.

17.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Works or the Contract (including non-contractual disputes or claims).

18. Third Party Rights

Nothing in the Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

19. Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

20. Notices

A notice required or permitted to be given by either party to the other under the Contract shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

21. Waiver

A waiver of any right or remedy under the Contract or by law is only effective if given in Writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

22. Insolvency

In the event of the insolvency of the Customer, then without limiting any other right or remedy available to the Company, the Company may terminate the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered or the Works (or any part of them) carried out but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.