

**Policy:** Standard Terms of Business – Supply of Services(Ltd)  
**Policy/Doc#:** SGP-006  
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## THE CUSTOMERS ATTENTION IS DRAWN IN PARTICULAR TO CLAUSE 9

### 1. Definitions

In these Standard Terms of Business (“Terms”) all references to:

1.1 **"The Company"** are to Stuga Machinery Limited (company registration number 05744259) of Edison Way, Gt Yarmouth, NR31 0NG;

1.2 **"The Customer"** are to the person, firm or company who agrees to enter into a Contract with the Company;

1.3 **"Equipment" and "Services"** are to the equipment and services detailed in the Contract;

1.4 **"Intellectual Property Rights"** are to patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

1.5 **"Particulars"** are to the particulars and information supplied to the Company by the Customer in connection with the Specification and the Provision;

1.6 **"Price"** is to the price shown in a Contract for the Provision with the addition of any sums payable as provided hereunder;

1.7 **"Provision"** are to the provision of Services or the supply of the Equipment;

1.8 **"Contract"** are to a binding written agreement between the Company and the Customer for the Provision in accordance with these Terms;

1.9 **"Specification"** is to a written statement outlining the objectives of the project.

### 2. Contract and Acceptance

2.1 The Contract constitutes an offer by the Company to the Customer for the Provision in accordance with these Terms.

2.2 Unless the Company agrees to the contrary in writing, no Contract shall be binding on the Company unless and until accepted by the Customer within the period and in the manner set out in the Contract.

2.3 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.

### **3. Complete Agreement**

3.1 These Terms together with the Contract (and any Specification set out in it) shall represent the complete agreement of the Company and the Customer.

3.2 No change may be made to these Terms or any Contract except with the written consent of the Company.

### **4. Specifications**

4.1 In preparing and submitting the Contract, the Company relies upon the Customer supplying all necessary relevant and accurate Particulars to the Company. Any errors or omissions contained in the Particulars supplied at any time resulting in any loss or damage to the Customer shall be the Customer's sole responsibility.

4.2 The Customer warrants that no Provision based upon the Particulars shall infringe the Intellectual Property Rights of any third party, or contravene the provisions of any statute, statutory instrument or regulation.

4.3 The Customer shall indemnify the Company from and against all losses, actions, claims, liabilities, costs and expenses incurred by the Company as a result of any breach of the warranty referred to in clause 4(b) of these Terms.

4.4 The Company reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Provision, and the Company shall notify the Customer in any such event.

### **5. Prices**

5.1 The Company may by written notice given to the Customer vary the Price as referred to in the Contract if:

5.1.1 any alteration in the Provision is made with the agreement of or at the request of the Customer; or

5.1.2 there is any suspension of or hindrance to the Provision as a result of the Customer's instructions or failure to provide the same.

5.2 The Customer shall not be entitled to make any deduction from the Price in respect of any alleged right of set-off or counter-claim.

5.3 Unless the Contract states to the contrary, the price shown in the Contract is exclusive of Value Added Tax and all applicable taxes, duties, tariffs and such charges of any nature whatsoever imposed in any country or territory, whether directly or indirectly, in respect of the Provision or payment therefore.

5.4 The Price is for the services as stated in the Contract. The Price does not include any major upgrades and/or repairs that may become necessary or advised such as Hepco Ring Rebuild/Replacement, Profile Upgrade/Change, Nextmove Card Replacement, which will be

quoted and charged separately. The Price does not include cover or costs incurred caused by theft, fire, flood or wilful damage.

5.5 Unless otherwise stated, the price includes the labour content for call outs. However, whilst no specific number of call outs or the reason is specified, the Company reserve the right to charge an additional fee for call outs arising from Customer negligence, failure to comply with the maintenance procedures as supplied by the Company, failure to have an internet connection to the machine or if the number of call outs become excessive.

## **6. Payment Terms**

6.1 The Price for the Provision shall be paid for by the Customer to the Seller in advance. The Company shall invoice the Customer for the Price in advance of the Provision. The Customer shall pay each invoice submitted by the Company in full within 30 days of the date of the invoice (or before the Provision is supplied, whichever is sooner) or in accordance with any credit terms agreed by the Company and confirmed in writing to the Customer. The Customer shall pay each invoice in full and in cleared funds to a bank account nominated in writing by the Company.

6.2 Time for payment of the Price shall be the essence of the Contract. The Company shall be entitled to charge interest on overdue amounts at the rate of 8 percent per annum from the date when payment becomes due (whether demanded or not) until the overdue amounts are paid.

6.3 The Company reserves the right to suspend further Provision and/or to cancel any allowance of further credit in the event of any payments not being made when due, or if the Company in its sole discretion at any time consider the financial condition of the Customer has ceased to justify any such terms being permitted.

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

6.5 In the event that, due to a decision on the part of the Customer, the Provision is terminated prior to its completion, payment for work already completed at that time shall be calculated at the Company's published daily rate in force at that time. This does not preclude termination of this Provision in accordance with clause 7, provided it can be demonstrated that the Company has failed to deliver the Services within the agreed timescale.

## **7. Time for Performance and Rights to Notice**

7.1 Any periods or dates stated in the Contract for the performance of Services are the Company's best estimates, but are not contractual statements. Should the Company's estimates prove inaccurate it shall use its reasonable endeavours to notify the Customer of the rescheduled period or dates for Provision as soon as reasonably practicable.

7.2 The number of service visits is an estimate only and reasonable endeavours shall be made to ensure that this number of service visits be maintained. If however, the number of visits is not undertaken due to the Customer cancelling a visit(s), the contract will cease at its renewal date and not be dependent on number of service visits completed.

7.3 Where a specific timescale is stated within a Contract, that date is the date on which it is deemed that if there is no progress being made with the Provision of the Services that all reasonable steps have been taken to carry out the Services.

## **8. Acceptance of Statutory liability**

8.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

8.1.1 death or personal injury caused by negligence;

8.1.2 fraud or fraudulent misrepresentation; and

8.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

## **9. Limitation of Liability**

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

9.1 This clause is subject to clause 8.

9.2 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

9.3 Nothing in this clause 9 shall limit the Customer's payment obligations under the Contract.

9.4 The following types of loss are wholly excluded:

9.4.1 loss of profits.

9.4.2 loss of sales or business.

9.4.3 loss of agreements or contracts.

9.4.4 loss of anticipated savings.

9.4.5 loss of use or corruption of software, data or information.

9.4.6 loss of or damage to goodwill; and

9.4.7 indirect or consequential loss.

9.5 The Company's total liability to the Customer shall not exceed the Price.

9.6 The Company and the Customer agree that the limitations and exclusions of liability contained herein are, by reference to the Provision, reasonable and in this connection the Customer's attention is drawn particularly to clause 10.

## **10. Insurance**

10.1 The Price has been calculated and agreed on the basis that the Company limits its liability and the Company recommends that the Customer arranges such insurance cover as the Customer may require in relation to the Provision and matter related thereto, such as to include, without limitation, cover for:

10.1.1 damage to premises or other physical property of any kind;

10.1.2 economic and other consequential or indirect loss or damage.

## **11. Indemnity - Third Party Claims**

The Customer agrees to indemnify the Company against any loss, damage, costs, claims or expenses incurred by the Company in respect of any liability established against the Customer by a third party arising out of or in connection with the Provision and due to the Customer's default or negligence.

## **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. Confidential information**

Unless the Company and the Customer agree to the contrary in writing, each shall treat all procedures, instructions, diagrams, documents and other information of any kind whatsoever supplied to it by the other as strictly confidential (except to the extent that any such information is available in the public domain or becomes so otherwise than due to a breach hereof or is already known to the receiving party prior to such supply).

## **14. Intellectual Property Rights**

14.1 Unless the Company agrees to the contrary in writing, no licence or assignment of any Intellectual Property Rights, which are at any time vested in the Company, shall be created in favour of the Customer by the Contract.

14.2 The Company shall have no liability for any damages, costs, charges or expenses awarded against or incurred by the Customer arising out of any infringement or alleged infringement of any intellectual Property Rights which are vested in a third party.

14.3 All Intellectual Property Rights in any software licensed to the Customer remain vested in the Company and must not be altered by the Customer in any way.

## **15. Assignment**

The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.

## **16. 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.

## **17. English Law and Jurisdiction**

17.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

17.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## **18. Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 18 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **19. Termination**

19.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one calendar months' written notice.

19.2 On termination of the Contract the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of the Provision supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt.

19.3 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.

19.4 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.

## **20. Legal compliance**

In performing its obligations under the Contract, each party shall comply with all applicable laws, statutes, regulations from time to time in force.