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NORTHAMPTON OFFICE
37 Crow Lane, Great Billing
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TERMS AND CONDITIONS OF PURCHASE

1. Definitions
In these terms and conditions, the following words and phrases shall have the meanings given below:

(i) the 'Buyer' shall mean Phoenix Brickwork (UK) Ltd, Unit 2 Plymouth Avenue, Brookhill Industrial Estate, Pinxton, Derbyshire NG16 6RA;

(ii) the 'Seller' shall mean the person(s) firm or company to whom this purchase order is addressed.

(iii) the "Purchase Order" means the Order plus these together with such other documents that are identified as part of the Purchase Order by the Buyer and this shall form the entire agreement between the parties which shall supersede any previous agreement and understanding between the parties in relation to the goods supplied. Where a partnering agreement exists, the conditions contained there, shall be deemed to form part of the purchase order and where conflict exists between the purchase order and the partnering agreement, the latter shall prevail.

(iv) the "Price" means the sum defined in accordance with this Purchase Order.

(v) the "Goods and/or Services" means the design (where applicable), manufacture, delivery (where applicable), materials and/or components described in this order.

(vi) words importing persons shall include firms and corporations as the case admits.

2. General Conditions
(i) These conditions of Purchase are in addition to the Buyer's statutory rights.

(ii) Unless otherwise expressly stated on the face of this order the terms and conditions as hereinafter set out shall be the only terms and conditions governing this Purchase Order.

(iii) Any exclusions or variations or attempted exclusion or variation of these terms and conditions by the Seller shall be void unless expressly agreed to in writing by a Director or the Buyer stating the terms and/or conditions and the exact nature of such exclusion or variation.

(iv) The Buyer will not accept liability or responsibility for payment of goods supplied or services performed unless sanctioned by an official Purchase Order listing the items/services delivered/performed.

(v) This order constitutes an order on the part of the Buyer which must be accepted by the Seller in writing or by the Seller's commencement of execution of the order, either of which shall also signify acceptance of these conditions of purchase and the instructions set out in or referred to by this Purchase Order.

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3. Quality and Quantity

The Seller shall indemnify the Company against all claims, demands and proceedings arising from any infringement of any patent, copyright, license, or other rights (including title) of any nature whatsoever in respect to the goods and materials provided under this Purchase Order. In the event of any injunction or distress being served or levied in respect of such matters or any third-party rights which restrict the use, adaptation or incorporation of such goods or materials into the principal contract the Seller shall without prejudice to any other rights or remedies of the Company replace such goods or materials with others as may be approved by the Company without further cost to the Company.

(i) The Seller hereby warrants and indemnifies the Buyer accordingly that all the Goods and/or Services provided pursuant to this Purchase Order shall: -

a. conform as to the quantity, quality, description, and specification stated in the order and/or attachments referred to herein. Where discrepancies exist between the same, clarification should be sought by the supplier. Failure to seek clarification will result in the Seller bearing all the costs incurred by the Buyer and Seller.

b. be of sound materials and workmanship complying in all respects with the appropriate current British and or European Standard Specifications, Codes of Practice and Statutory Legislation.

c. be fit for the purpose intended whether indicated expressly or by implication in this Purchase Order or any attachments, referred to herein.

d. be equal to samples or patterns provided by the Buyer or submitted by the Seller and approved by the Buyer which approval shall not relieve the Seller in any way from his obligations to comply with the requirements of Clauses 3(ii) (a)-(c) inclusive above.

(ii) Goods and Services of inferior quality not complying with the requirements, terms, and conditions of this Purchase Order and or any attachments referred to herein may be rejected by the Buyer and will be held at the Seller's sole risk and expense, the Buyer reserving the right to: -

a. cancel the whole or any outstanding balance of the order.

b. require the Seller to replace and/or remove the goods at the Seller's expense.

c. accept the goods at a discount price acceptable to the Buyer.

d. charge the Seller for any direct loss incurred or secured as a result of replacement of the rejected goods by others of the required quality.

(iii) The Buyer shall be indemnified by the Seller against all direct costs, actions, proceedings, claims and demands, as a result of goods being supplied or services performed pursuant to this order, which goods or services are not in conformity with the requirements thereof.
(iv) The Buyer will be entitled to inspect and test the goods as appropriate prior to delivery and to charge the Seller with the costs of testing or inspecting any goods found to be inferior in, any respect, to the requirements of this order and or any attachments referred to herein. The results of any inspection or tests will not relieve the Seller from his obligations and liabilities stated in Clauses 3(ii) (a)-(d) inclusive above.

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P4. Title and Risk

(i) The property in any goods comprised in this order shall pass to the Buyer in accordance with the provisions of S18 of the Sale of Goods Act 1979 or any statutory re-enactment or amendment thereof. The Seller shall not in any circumstances whatsoever retain or purport to reserve to itself title in such goods or any part thereof for any period after the time at which the property in the goods or any part thereof would otherwise pass to the Buyer under S18 of the Sale of Goods Act 1979 and these terms and conditions.

(ii) Should any payment (full or part) be made by the Buyer prior to receiving any Goods and/or Services, or prior to the completed manufacture of the Goods, then the title shall pass to the Buyer for the raw materials at the point in which they are received by the Seller.

(iii) If the Seller postpones delivery of the goods or any part thereof at the request of the Buyer such goods shall nevertheless remain at the Seller's risk until delivery has been satisfactorily completed.

(iv) The provisions of sub-paragraph (i) hereof in respect of the passing of property in the goods shall operate without prejudice to any right of rejection of the goods or any part thereof which may accrue to the Buyer by virtue of these conditions.

(v) The risk in the goods supplied in accordance with this Purchase Order shall pass to the Buyer upon delivery or collection. No responsibility will be accepted by the Buyer for any goods until actual delivery is made to the destination specified and it is reasonably possible to check that the goods are contract compliant. Advice notes / Delivery tickets will be accepted as evidence of delivery solely and only when signed by an authorised recipient in the Buyer's direct employ.

(vi) Should the goods be found upon proper inspection not to be contract compliant the Buyer will inform the Seller in accordance with clause 5(ii) hereof as soon as is reasonably possible.

(vii) The Seller in supplying goods and materials under this Purchase Order shall be responsible for safe delivery of the goods and materials to the Buyer in an undamaged state and deliver and offload at a point as directed by the Buyer. Any carrier employed by the Seller in respect of delivery will be the agent of the Seller and not that of the Buyer.

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5. Rights of Cancellation, Carriage and Delivery

(i) The Buyer reserves the right of cancellation of the whole or part of the goods or materials the subject this Purchase Order up to the time of delivery. The Seller will have no claim for loss of profit and/or under-recovery of overheads in the event of such cancellation.

(ii) Unless otherwise stated on this order all goods must be supplied and delivered carriage paid to wherever and whenever the Buyer may direct.

(iii) No deliveries will be accepted outside the Buyer's normal site working hours or on Saturday's or Sunday's without prior consent of the Buyer.

(iv) Goods must be accompanied by Advice/Delivery Notes which must state the number and date of the Buyer's Purchase Order, the contract number, delivery address, and delivery or collection date and fully describe and quantify the goods delivered or collected including any part numbers given and be acknowledged by a clear signature of an authorised recipient who is to be in the direct employ of the Buyer.

(v) In the event of the Buyer's contract with his employer being cancelled, delayed, interrupted or otherwise restricted by force majeure, lockout, strikes of work men, or any other clause whatsoever beyond the control of the Buyer, then the Buyer shall be at liberty to defer the date of delivery of the goods or performance of the Services or to cancel or vary the order or any part thereof.

(vi) No charge will be accepted by the Buyer for packing crates or other containers or for pallets, palletisation or the like unless agreed and shown on the order or subsequently requested by the Buyer and confirmed.
(vii) If for any reason the Buyer is unable to accept delivery of the goods at the specified time the Seller shall store the goods, safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery. The Buyer shall pay the Seller's reasonable pre-advised costs for such storage.

(viii) Time(s) for delivery shall be deemed to be of the essence of this contract with the period of delivery being reckoned from the date stated in the Buyer's Purchase Order unless otherwise agreed in writing. Without prejudice to the generally of the foregoing the Buyer reserves the right to cancel partially or completely any such order should the time(s) or delivery be exceeded, without prejudice to the Buyers right of recovery from the Seller of any loss, damage and/or expense (whether direct or consequential) incurred by the Buyer owing to any such delay in delivery.

(ix) The Seller while expecting delivery of goods and materials to the Buyer on premises irrespective of whether wholly or partly occupied by the Buyer or upon any road or footpath adjacent to such premises shall indemnify the Buyer in respect of all actions, claims or damage howsoever arising irrespective of death personal injury or damage to property being caused directly or indirectly by any breach of any duty imposed by statute, common law or otherwise on the part of the Seller and their servants and agents.

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6. Amendments / Variations
(i) The Buyer shall not be bound by any alleged variation, waiver of or addition to this Purchase Order in any respect whatsoever unless expressly agreed in writing by the Buyer's duly authorised representative, and no claims will be accepted by the Buyer as a result of any unauthorised variations or extras.

7. Assignment
(i) The Seller shall not assign, transfer, or sublet the contract established by this Purchase Order or any part thereof without written permission of the Buyer.

8. Testing
(i) The Buyer may carry out tests and inspections at the Seller's premises by appointment prior to dispatch of the Goods and/or Services.

9. Design
(i) The Seller shall be liable to the Buyer for the design of the Goods and/or Services to the extent that the Seller has designed or will design the Goods and/or Services including but without prejudice to the generality hereof: -
a. The design development of the Goods and or Services.
b. The selection of goods and materials in relation to the Goods and/or Services.
c. The satisfaction of any performance specification or requirement expressed by or referred to by the Buyer or which may be inferred from a description of the Goods and/or Services and the Seller warrants to the Buyer that he has exercised and will continue to exercise in the design of the Goods and/or Services all the reasonable skill, care, and diligence to be expected of a competent professional designer who is experienced in carrying out such.

(ii) Where the Seller assigns the responsibility of design to a third party, the Seller agrees to procure and provide the Buyer with any warranty reasonably requested within 14 days of such request from such third parties.

10. Plant Hire (when used as a plant hire order)
(i) The Goods and/or Services are accepted on hire subject to complying in all respects with the current relevant statutory regulations. The Seller will provide a fully competent operator with operated plant, when requested.

(ii) Vehicles to be used on the public highway must be comprehensively insured, licensed, and taxed to comply with relevant current statutory regulations. The Seller will indemnify the Buyer against any claim whatsoever arising from a breach thereof.

(iii) Where no hire agreement is received by the Buyer, the above plant is accepted on hire under Construction Plant-Hire Association model conditions for the hiring of plant only (CPA Conditions).

(iv) As all excavators may be required to be used as occasional cranes, a copy of the Exemption Certificate HSE Form no 2513 must be supplied with each machine.

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11. Patents & Trademarks

(i) The Seller warrants to the Buyer that the design, construction, and quality of any Goods to be manufactured or supplied by him in accordance with this Purchase Order do not infringe any British or Foreign patent, trademark, trading name, or registered design. The Seller undertakes to indemnify the Buyer against any loss, damage, liability, costs, or expenses incurred or suffered by the Buyer by reason of any breaches of the said warranty provided under this clause

12. Indemnity

(i) The Seller indemnifies the Buyer against all claims in respect of direct loss, injury (including death) or damage to any person, property or thing occasioned as a result of any act of commission or omission by the Seller, his agents, or sub-contractors in connection with the execution of this Purchase Order.

13. Insurance

(i) To the extent this Purchase Order relates to goods to be supplied and/or works to be executed by the Seller, the Seller shall maintain the following insurances:-

(a) Employer's liability insurance with a minimum indemnity limit of £10 million covering liability for death, personal injury and product liability.

(b) Third Party liability insurance (including damage by fire, flood and explosion and public liability) with an indemnity of a minimum £20 thousand in respect of any one claim such claims to be unlimited in any period of cover and the policy endorsed to indemnify the Company as principal.

(c) Professional Indemnity insurance in respect of any professional liability that may arise under the Contract that the Seller may have, for design or otherwise, with a minimum cover of £2 million.

(ii) The Seller shall insure the Product(s) in respect of physical loss or damage until delivery for their full replacement value and such policy shall be endorsed to indemnify both the Company and the Seller as principals.

(iii) The Seller shall provide proof of such insurance cover to the Company within one week of acceptance or deemed acceptance of this Purchase Order, if requested.

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14. Payment
(i) The Seller shall be entitled to invoice the Company on or after delivery of the Goods at the price quoted in the Purchase Order. It is a condition precedent to payment that Invoice(s) must clearly show the Buyer's order number the name of the principal contract and delivery address, save as noted herein the Buyer shall pay the Price of the Goods and/or Services within 60 days after the end of the month of receipt by the Buyer of an invoice conforming to the requirements of this Purchase Order unless otherwise agreed in writing with the Buyer.

(ii) The Buyer shall be entitled to set off from any and all payments due under this Purchase Order any sums owed to the Buyer by the Seller under this or any other contract between the parties.

(iii) The price quoted by the Seller shall be deemed to include the cost of packing, delivery and unloading, all royalties, charges, commissions, taxes and/or other sums (to whosoever payable) in respect of the extraction, manufacture and use of any goods or materials provided under these Conditions of Purchase.

(iv) No increase in the price may be made whether on account of increased material, labour, transport costs, currency fluctuations, errors, or any other matter.

(v) No variation in the rates or discount etc. shown or any additional charges whatsoever will be accepted by the Buyer unless reasonable written notice thereof has been given by the Seller prior to the completion of the supply of Goods and/or Services as specified in the order and the Buyer's written approval therefore has been obtained by the Seller. The Buyer having received written notification and any requested substantiation of any proposed increase in price shall have the option of cancelling the order without penalty.

(vi) If the Seller fails to produce satisfactory substantiation and the Buyer considers the variation in rates or discounts to be unreasonable then the Buyer shall have the option of cancelling the order and collecting from site.

15. Value Added Tax
(i) Where the Goods and/or Services to be provided in accordance with this Purchase Order are subject to Value Added Tax, the amount legally demandable is to be rendered as a separate item of account on all invoices and if required by the Buyer the Seller shall produce bona fide evidence of the amount paid or to be paid to them in respect thereof.

16. Third Party Rights
(i) Nothing in the terms and conditions of this Purchase Order is intended to confer on any third party any rights by way of the Contracts (Rights of Third Parties) Act 1999

17. Law & Legal Construction
(i) This Purchase Order contract shall be governed by and be construed in all respects including the formation and performance thereof in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the Courts thereof.

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