

1. INTERPRETATION

1.1. Definitions

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.3.

Contract: the contract between Pharos and the Customer for the sale and purchase of the Products in accordance with these Conditions.

Customer: the person or firm who purchases the Products from Pharos.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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 shall subsist now or in the future in any part of the world.

Order Acknowledgment: has the meaning given in clause 2.3.

Pharos: Pharos Architectural Controls Limited (registered in England and Wales with company number 05286891).

Products: the products (or any of them) set out in the Purchase Order.

Purchase Order: the Customer's order for the Products, as set out in the Customer's purchase order form or the Customer's written acceptance of Pharos's quotation, as the case may be.

1.2. Interpretation

- A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to a party includes its successors and permitted assigns.
- A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 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.
- A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

- 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.
- The Purchase Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Purchase Order are complete and accurate.
- The Purchase Order shall only be deemed to be accepted when Pharos issues a written acceptance of the Purchase Order (which Pharos shall be free to issue or not at its discretion) (**Order Acknowledgment**), at which point the Contract shall come into existence.
- Any drawings, descriptive matter or advertising produced by Pharos and any descriptions or illustrations contained in Pharos's catalogues, technical resources, or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Contract nor have any contractual force.
- A quotation for the Products given by Pharos shall not constitute an offer. A quotation shall only be valid for a period of 90 Business Days from its date of issue, (or, if different, the period specified in the relevant quotation).

3. DELIVERY

- Pharos shall ensure that each delivery of the Products is accompanied by a delivery note that shows the date of delivery, the relevant Customer and Pharos reference numbers and the type and quantity of the Products (including the serial number of the Products).
- Any dates quoted for delivery are approximate only, and the time of delivery is not guaranteed nor shall it be of the essence. Pharos shall not be liable for any delay in delivery of the Products that is beyond its reasonable control in accordance with clause 11 or the Customer's failure to provide Pharos with adequate delivery instructions or any other instructions that are relevant to the supply of the Products. Where Pharos has stipulated that Products are to be supplied on prepayment terms, no Product will be supplied until all amounts due under such terms have been received by Pharos in cleared funds.
- Pharos may deliver the Products by instalments (unless set out otherwise on the order acknowledgement), which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4. WARRANTY

- Pharos warrants the Products in accordance with the terms (and subject to the conditions and exclusions) set out in Pharos Product Warranty available at <http://www.pharoscontrols.com/legal>, which shall form part of the Contract.

5. DELIVERY, TITLE AND RISK

- All Products are shipped EXW 272 Gunnersbury Avenue, London, W4 5QB, United Kingdom (Incoterms® 2020 Rules) unless otherwise agreed in writing. The Customer is responsible for all local duties and taxes payable in respect of the sale, transport and delivery of the Products at the end destination.
- Shipping via FedEx or a comparable carrier to the end destination specified in the Purchase Order (if any) will be added by Pharos when acknowledging the Customer's Purchase Order, unless otherwise instructed by the Customer. Unless otherwise agreed in writing, shipping is at the Customer's cost and risk, and the Customer should ensure Products are adequately insured from the point of delivery (Ex-works 272 Gunnersbury Avenue, London, W4 5QB, United Kingdom).
- Title to the Products shall not pass to the Customer until the earlier of when:
 - Pharos receives payment in full (in cash or cleared funds) for the Products; and
 - the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 5.5.
- Until title to the Products has passed to the Customer, the Customer shall:
 - store the Products separately from all other goods held by the Customer so that they remain readily identifiable as Pharos's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
 - notify Pharos immediately if it becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d)
- Subject to clause 5.6, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before Pharos receives payment for the Products. However, if the Customer resells the Products before that time:
 - it does so as principal and not as Pharos's agent; and
 - title to the Products shall pass from Pharos to the Customer immediately before the time at which resale by the Customer occurs.
- At any time before the title to the Products passes to the Customer, Pharos may require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

6. SYSTEM/SITE REQUIREMENTS

- 6.1. Pharos processing systems generally require an Ethernet network. Suitable Ethernet switches and cabling are available from third party vendors.
- 6.2. Pharos software is available to download free of charge. Programming and commissioning are excluded from any Product costs. Training and programming services are available from Pharos but may incur additional cost. Pharos is under no obligation to provide any such services, which shall be provided by mutual agreement only.
- 6.3. Some Pharos products require an external low voltage power supply or power over Ethernet (PoE) connection. Pharos can quote for and supply both low voltage power supplies and PoE Ethernet switches on request.
- 6.4. Rack mount products ship without an IEC power cable unless requested.
- 6.5. As a manufacturer, Pharos does not offer a system design service. Pharos can only advise on which products may suit a particular application or capacity. The final control system design or intent is the responsibility of the Customer and is subject to Pharos system limits and capacities.
- 6.6. Technical services may be offered by exception and are quoted on a per day basis with travel expenses charged per a pre-arranged rate.
- 6.7. Pharos is not responsible for:
 - (a) project management;
 - (b) site conditions;
 - (c) system configuration, design, programming and commissioning (unless otherwise agreed by exception with Pharos);
 - (d) hardware installation; or
 - (e) ensuring compliance with the Customer's obligations under applicable health and safety laws,which remain the Customer's sole responsibility.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. As between Pharos and the Customer, Pharos owns the Intellectual Property Rights in the Products. The Customer agrees that the Intellectual Property Rights in the Products may not be reproduced or used in any way except with the prior written consent of Pharos.
- 7.2. Pharos has not knowingly infringed any registered Intellectual Property Rights of any third party but does not warrant or give any assurance to the Customer that any Intellectual Property Rights in the Products do not infringe the intellectual property rights of any third party.

8. PRICE AND PAYMENT

- 8.1. The price of the Products shall be the price set out in the Order Acknowledgment.
- 8.2. The price of the Products:
 - (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to Pharos at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) excludes the costs and charges of insurance and transport of the Products, which shall be invoiced to the Customer where applicable.
- 8.3. The Customer is responsible for all customs and import duties and taxes arising in relation to the sale and delivery of the Products. Pharos retains the right to specify applicable commodity (HS) codes for each Product.
- 8.4. Pharos may invoice the Customer for the Products on or at any time after shipment.
- 8.5. Save in respect of proforma invoices where prepayment is required in advance by Pharos, the Customer shall pay each invoice submitted by Pharos:
 - (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by Pharos and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds to a bank account nominated in writing by Pharos, and
 - (c) time for payment shall be of the essence of the Contract.
- 8.6. If the Customer fails to make a payment due to Pharos under the Contract by the due date, then, without limiting Pharos's remedies under clause 10:

- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.6(a) will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;
 - (b) Pharos shall not be obliged to provide any support in respect of the relevant Product(s) until such payment is made; and
 - (c) the Warranty shall cease to apply to the relevant Product(s) until such payment is made.
- 8.7. 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).

9. LIMITATION OF LIABILITY

- 9.1. The restrictions on liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987.
- 9.3. Subject to clause 9.2, Pharos's total liability to the Customer shall not exceed the Price.
- 9.4. Subject to clause 9.2, the following types of loss are wholly excluded: loss of profits, sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of or damage to goodwill; and indirect or consequential loss.
- 9.5. This clause 9 shall survive termination of the Contract.

10. TERMINATION

- 10.1. Without limiting its other rights or remedies, Pharos may terminate this Contract with immediate effect by giving written notice to the Customer if:
 - (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within Pharos of that party being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, 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 its 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) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 10.2. Without limiting its other rights or remedies, Pharos may suspend provision of the Products under the Contract or any other contract between the Customer and Pharos if the Customer becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(c), or Pharos reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3. Without limiting its other rights or remedies, Pharos may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

- 10.4. On termination of the Contract for any reason the Customer shall immediately pay to Pharos all of Pharos's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, Pharos shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 10.5. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

11. FORCE MAJEURE

- 11.1. Pharos shall not 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. In such circumstances Pharos shall be entitled to a reasonable extension of the time for performing such obligations. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Pharos's reasonable control: (a) natural disaster, epidemics, pandemics, explosion, flood, tempest, fire or accident; (b) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Pharos or third parties); (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition; (d) import or export regulations or embargos; and (e) delays, acts or omissions on the part of suppliers or third parties engaged by Pharos.

12. GENERAL

12.1. Assignment and other dealings

- (a) Pharos may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Pharos.

12.2. Entire agreement

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

12.3. Variation

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.4. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5. 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 the Contract. If any provision of the Contract is deemed deleted under this clause 12.5.12.5 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.

12.6. Notices

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to, in the case of the customer, the address specified in the Purchase Order and in the case of Pharos, to sales@pharoscontrols.com.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the second Business Day after posting; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.6(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

12.7. Third party rights

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

12.8. Governing law

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.

12.9. Jurisdiction

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.