

General Terms and Conditions of Supply



1. Definitions

In these terms and conditions (these "**Terms**"), the defined terms set out in clause 20 apply throughout.

2. Applicable Terms and Conditions

2.1. The Quotation is made on and subject to these Terms and constitutes an offer by Pennant to supply the Equipment and/or the Services to the Customer.

2.2. The Customer's acceptance of the Quotation ("**Quotation Acceptance**") occurs upon the Customer sending a written confirmation to Pennant that it wishes to proceed with the purchase of the Equipment and/or the Services (whether that is by the issue of a purchase order, by letter or by email).

2.3. If Quotation Acceptance has not occurred within 30 days of the date of the Quotation (or such longer period as may be stated on the Quotation), the Quotation shall lapse and no longer be capable of acceptance.

2.4. Upon Quotation Acceptance, a binding contract shall be formed between Pennant and the Customer upon the terms of, and subject to, the following (which are hereby ranked in order of supremacy (highest to lowest) in case of conflict between them (with a higher-ranking document prevailing over a lower one) and which together comprise the "**Contract**", and each a "**Contractual Document**"):

2.4.1. the Quotation;

2.4.2. these Terms; then

2.4.3. any other documents explicitly referenced in the Quotation as forming part of the contemplated sale and purchase contract.

2.5. No other document, correspondence, or statement shall be incorporated into the Contract unless set out in a Contractual Document or expressly agreed by Pennant in writing.

2.6. Any terms and conditions set out or referred to in any purchase order issued by the Customer in respect of the Quotation shall not be incorporated into the Contract and the Customer acknowledges and agrees that the issue of any such purchase order shall solely be for the purpose of effecting Quotation Acceptance to form the Contract (and that, irrespective of anything said therein, any purchase order terms and conditions shall be of no contractual effect whatsoever).

2.7. Each Quotation, upon Quotation Acceptance, shall form a separate Contract.

2.8. Pennant may, after Quotation Acceptance, cancel the Contract (with no further liability) by written notice to the Customer, provided that any such notice is sent within 10 days of Quotation Acceptance.

3. Price

3.1. The price for the Equipment and/or the Services (the "**Price**") shall be as stated in the Quotation subject to this clause 3.

3.2. Pennant may, on written notice to the Customer, increase the Price to reasonably reflect the cost to Pennant (as regards performance of the Contract) of increases in materials or labour arising after the date of the Quotation.

- 3.3. Prices quoted are exclusive of:
- 3.3.1. Value Added Tax (“VAT”);
 - 3.3.2. any other form of purchase tax and/or import duties;
 - 3.3.3. packaging, packing and transportation/delivery;
 - 3.3.4. insurance,
- unless the contrary is expressly stated or is clear from the face of the Quotation.

4. Delivery

- 4.1. The delivery term in respect of any Equipment shall, unless otherwise stated on the Quotation or agreed in writing by Pennant, be Free Carrier (FCA, Incoterms 2020) with loading to take place at such of Pennant’s premises as Pennant may confirm in writing before delivery.
- 4.2. Where the Contract concerns more than one item of Equipment, each item of Equipment may be delivered separately (unless the Quotation expressly states otherwise).
- 4.3. Unless stated in the Quotation or otherwise agreed in writing by Pennant, the Customer is responsible for arranging for (and bearing the costs of) collection of the Equipment. If the Customer does not arrange for such collection within 14 days of delivery, Pennant may arrange for, and charge to the Customer the costs of storage of the Equipment (which shall be entirely at the Customer’s risk).
- 4.4. Pennant may, on the Customer’s request, provide a further quotation for packaging, delivery etc (if the same was not included in the Quotation).
- 4.5. Unless otherwise stated in the Quotation or agreed in writing with Pennant, the Customer shall be responsible for safely installing and commissioning the Equipment. The Customer shall be responsible for ensuring that, once installed and commissioned, the Equipment is used safely in accordance with the purpose for which it was designed.

5. Acceptance

- 5.1. Acceptance of the Equipment shall occur as soon as the Customer has had a reasonable opportunity to inspect the Equipment and has not rejected the same.
- 5.2. If no inspection has taken place within 5 days of delivery, the Equipment shall be deemed accepted by the Customer and the right of rejection shall be lost.
- 5.3. If the Customer does not accept the Equipment upon inspection, Pennant shall be afforded a reasonable opportunity to repair, replace or remedy any alleged default.

6. Title and Risk

- 6.1. Title to the Equipment shall pass to the Customer once the Price has been irrevocably paid in full (and until such time shall remain vested in Pennant).
- 6.2. Risk in the Equipment shall pass to the Customer on delivery.

7. Payment

- 7.1. The Price shall be payable in the amounts and at the times set out in the Quotation, subject to clause 3.2, or as otherwise agreed in writing between the Customer and Pennant.

- 7.2. The Customer shall pay each of Pennant's invoices within 30 days of the invoice date.
- 7.3. Each invoice must be paid in the full amount and the Customer may not setoff, deduct or withhold any amounts due under the invoice.

8. Pennant Property and Personnel

- 8.1. The Customer shall ensure that Pennant Property is at all times:
 - 8.1.1. clearly identified and marked as being the property of Pennant;
 - 8.1.2. treated in accordance with any security classification identified;
 - 8.1.3. stored safely, securely and separately from any other property belonging to the Customer or any third party; and
 - 8.1.4. fully insured against risk of loss and/or damage whilst on the Customer's premises or otherwise in its possession or under its control.
- 8.2. Pennant reserves the right to repossess Pennant Property at any time and the Customer hereby grants an irrevocable right and licence to Pennant, its servants or agents to enter its premises to recover Pennant Property.
- 8.3. The Customer shall ensure the safety of any employees or contractors of Pennant who visit premises owned or controlled by the Customer.

9. Warranties

- 9.1. Pennant warrants that:
 - 9.1.1. upon delivery, the Equipment shall be:
 - 9.1.1.1. as described in the Quotation;
 - 9.1.1.2. fit for the purpose for which it was designed; and
 - 9.1.1.3. free from material defects; and
 - 9.1.2. any Services will be provided with reasonable care and skill and in accordance with the Quotation.
- 9.2. The warranties in clause 9.1.1 (the "**Equipment Warranties**") shall continue for 12 months from the date of delivery of the Equipment (the "**Warranty Period**").
- 9.3. If a defect is discovered in the Equipment during the Warranty Period, Pennant shall, at its discretion:
 - 9.3.1. refund to the Customer the price of the defective Equipment; or
 - 9.3.2. repair, replace or remedy the defective Equipment (at its own cost).
- 9.4. The Equipment Warranties only cover defects in the Equipment inherent at the time of delivery and do not cover subsequent damage or wear and tear.
- 9.5. Illustrations, technical drawings and descriptions contained in product literature and other marketing materials provided to the Customer with or prior to the Quotation do not form part of the Contract and Pennant makes no warranties in relation thereto.

- 9.6. To the fullest extent permitted by law, all warranties implied by statute are excluded from the Contract.
- 9.7. The Equipment Warranties do not apply to any second-hand or refurbished Equipment, which is sold as seen with no warranty or guarantee attached.
- 9.8. The Equipment Warranties are not assignable.

10. Termination

- 10.1. Either party may terminate the Contract by written notice with immediate effect if:
 - 10.1.1. the other party is unable to pay its debts generally as they fall due; or
 - 10.1.2. an application is made, or a resolution is passed at a meeting of the other party, for (or to petition for) other party's winding up, dissolution or administration; or
 - 10.1.3. the other party proposes or makes an arrangement with its creditors generally; or
 - 10.1.4. a chargee or any administrative or other receiver or manager takes possession of, or exercises powers of receivership or sale over any assets of the other party; or
 - 10.1.5. there occurs, in relation to other party, in any jurisdiction, any event analogous to those listed above.
- 10.2. Pennant may terminate the Contract by written notice with immediate effect if the Customer fails to pay any invoice when due.
- 10.3. Termination of the Contract shall be without prejudice to either party's accrued rights.

11. Confidentiality

- 11.1. In these Terms, "**Confidential Information**" means all confidential or proprietary information, including Intellectual Property Rights of whatever nature, (however recorded or preserved) that is disclosed or made available whether before or after the date of the Quotation (in any form or medium), directly or indirectly, by Pennant (or any member of the Group) to the Customer or its Permitted Persons (as defined in clause 11.4) and any information produced by the Customer which in any way derives from the Confidential Information. Confidential Information does not include information which was already in the Customer's lawful possession before disclosure by Pennant.
- 11.2. The Customer acknowledges that Pennant may disclose Confidential Information to it for the purpose of performing the Contract (the "**Purpose**").
- 11.3. The Customer shall:
 - 11.3.1. keep the Confidential Information secret and confidential;
 - 11.3.2. hold all Confidential Information on secure IT systems which have appropriate and effective restrictions against unauthorised internal and external access;
 - 11.3.3. take reasonable security precautions in respect of the transfer and storage of the Confidential Information (to be no less stringent than it would apply to its own confidential information) and not remove from any Confidential Information any security classification or other markings (including without limitation, copyright and confidentiality notices);
 - 11.3.4. not use or exploit the Confidential Information in any way, except for or in connection with, the Purpose;

- 11.3.5. only disclose the Confidential Information as per clause 11.4 or 11.5 or with Pennant's prior written consent; and
 - 11.3.6. on Pennant's request and/or upon termination of the Contract, immediately destroy, erase or return to Pennant all documents and other records of the Confidential Information held by the Customer or its Permitted Persons.
- 11.4. The Customer may disclose the Confidential Information to any of its officers, employees and advisers to the extent that the same need to know the relevant Confidential Information for the Purpose ("**Permitted Persons**"), but the Customer shall ensure that each such Permitted Person to whom the Confidential Information is disclosed complies with the obligations in this clause as if they were the Customer.
- 11.5. The Customer may disclose Confidential Information if compelled to do so by a Court order or lawful authority but shall inform Pennant immediately and keep it informed if this happens.
- 11.6. These confidentiality obligations shall survive termination of the Contract and endure indefinitely, or so long as is lawful.

12. Data Protection

- 12.1. The Customer shall ensure that any personal data provided to it by Pennant is:
- 12.1.1. only processed for the purposes for which it is provided;
 - 12.1.2. processed and held strictly in accordance with Data Protection Legislation (in particular, per the six data protection principles) and any instructions of the Customer from time to time; and
 - 12.1.3. (without prejudice to the generality of the foregoing) treated as if it was Confidential Information in accordance with clause 11.
- 12.2. The Customer shall:
- 12.2.1. not transfer any personal data provided to it by Pennant outside of the UK or EEA unless it has Pennant's express written consent to such transfer (which shall be conditional on, without limitation, the execution by the Customer of a 'model clauses' agreement);
 - 12.2.2. notify Pennant immediately if it becomes aware of, or suspects, any loss or unauthorised access of personal data and take all reasonable steps to mitigate the effects of such event and to assist Pennant with any internal or external investigation, claim or procedure which may arise as a result;
 - 12.2.3. enable any inspections or audits which Pennant may wish to conduct regarding data protection or confidentiality;
 - 12.2.4. promptly implement any reasonable requests of Pennant as to the protection of personal data and/or confidential information;
 - 12.2.5. co-operate generally with Pennant in good faith to ensure compliance with Data Protection Legislation (including any relevant subject access requests).
- 12.3. The Customer warrants to Pennant that it has the appropriate consent of the data subject in respect of any personal data which it provides to Pennant.

13. Intellectual Property Rights

- 13.1. Nothing in the Contract shall operate to transfer any Intellectual Property Rights of Pennant to the Customer.
- 13.2. Any Intellectual Property Rights created by or on behalf of Pennant in connection with the Contract shall belong to and vest in Pennant and, in the event that any Intellectual Property Rights in connection with the Contract vest in the Customer for any reason, the Customer shall assign or shall procure the assignment to Pennant, with full title guarantee and free from all third party rights, of all such Intellectual Property Rights.

14. Indemnity

The Customer shall indemnify Pennant (in cash, on demand) against any and all losses (including without limitation, damages, expenses, fines (to the extent permitted by law) and professional fees) suffered or incurred by Pennant arising out of or in connection with any breach by the Customer (or its agents or subcontractors) of clauses 12 and 13.

15. Force Majeure

Pennant shall not be liable to the Customer for any delay or default in performance of the Contract which results from any cause beyond Pennant's reasonable control including but not limited to fire, flood, explosion, accident, strike, pandemic or other public health emergency or lock out (such causes being "**FM Events**") and any dates for delivery under the Contract shall be deemed extended by the duration of any such FM Events.

16. Assignment, Sub-Contracting and Amendments

- 16.1. Pennant may sub-contract all or part of the manufacture of the Equipment to such parties as it considers are capable of the same.
- 16.2. Neither party may assign the benefit of the Contract save that Pennant may assign to another member of the Group.
- 16.3. The Customer shall, if called upon to do so by Pennant, enter into a novation transferring Pennant's obligations under the Contract to any other member of the Group.
- 16.4. Any variations or waivers to the Contract (including, without limitation, changes to the scope of supply described in the Quotation) shall only be binding upon Pennant if made in writing and agreed or accepted by a duly authorised signatory of Pennant.

17. Authority

The only officers or employees of Pennant authorised to agree any variation or waiver of these Terms are as follows: Commercial Officer; Commercial Manager; any statutory director; the company secretary. The Customer acknowledges and agrees that any variation or waiver purportedly agreed by any other officer or employee of the Company shall be of no legal effect and not binding on Pennant.

18. Limitation of Liability

- 18.1. Pennant's maximum aggregate liability under the Contract shall not exceed the Price. Pennant shall be liable for the Customer's direct losses only and shall not be liable in respect of any consequential, indirect or special losses, or losses of any third party.
- 18.2. Clause 18.1 shall not operate to limit or exclude any liability of Pennant to the extent that it arises from, or is increased by, the fraud of Pennant, nor shall it apply to limit or exclude the liability of Pennant for death or personal injury caused by its negligence or breach of contract.

19. Law and Jurisdiction

The Contract shall be governed and construed and interpreted in accordance with English law and the Courts of England and Wales shall have exclusive jurisdiction.

20. Defined Terms

“Confidential Information”	has the meaning given in clause 11.
“Customer”	the person, firm, company or organisation to whom the Quotation is addressed.
“Data Protection Legislation”	the Data Protection Act 1998, the Data Protection Act 2018, EC Regulation 2016/679 (the General Data Protection Legislation) and all legislation enacted in the UK in respect of the protection of personal data.
“Equipment”	the goods which are the subject of the Quotation, or any of them.
“Group”	Pennant International Group plc and any of its subsidiary undertakings from time to time.
“Intellectual Property Rights”	intellectual property rights of any and every type, including without limitation, copyright, design rights, patents, and any designs, inventions or similar capable of protection by registration.
“Pennant”	Pennant International Limited or, if different, such other company in the Group in whose name the Quotation was issued.
“personal data”	has meaning ascribed to it by the Data Protection Legislation.
“Quotation”	the written quotation or proposal issued by Pennant in respect of the proposed supply to the Customer of the Equipment and/or Services.
“Services”	any services to be provided by Pennant as described in the Quotation.
“Pennant Property”	drawings, data, goods, tools, materials, or any other property provided to the Customer by Pennant including, until such time as irrevocably paid for in full, the Equipment. ‘Pennant Property’ shall include, without limitation, any tooling or other equipment belonging to Pennant which is brought onto the premises of the Customer or its agents by Pennant.