

## CONDITIONS OF SALE

**Hero Locker Systems Ltd, (trading address) Unit 9-10, Ailsa Industrial Park, Ailsa Road, Irvine, KA12 8LN.**

**Company Registration number: SC295001**

1. The 'Company' referred to in the following conditions means 'Hero Locker Systems Ltd'. The 'Purchaser' means the person, firm or company contracting with 'Hero Locker Systems Ltd'.

(i) All quotations are made and all orders are accepted subject to the following conditions. All other conditions contained in any order or otherwise are excluded from the contract or any variation thereof unless expressly accepted by the 'Company' in writing.

(ii) In these conditions the expression of 'Goods' shall mean plant, materials, equipment or any part of parts thereof supplied by the Company and the expression 'Services' shall mean all works or design, repair or supervisory services and work of erection on site and any other act to be performed by the Company.

(iii) No Contract is deemed to come into existence unless and until the Purchaser's order to carry out the services or supply the material specified in a quotation is accepted by the Company in writing. The foregoing is entirely without prejudice to the Company's whole rights at common law in the event of the Company seeking to claim that a Contract has come into existence without such written acceptance.

### 2. SITE SURVEYS

(i) All quotations are subject to a site survey being made by the Company's technical staff if the Company in its discretion requires verifying the information given by the Purchaser.

(ii) The Company reserves the right to amend the design subject to the site survey.

(iii) The Company accepts no responsibility to ensure that the Purchaser's premises are adequate to withstand the loads imposed and the Purchaser is deemed to warrant that all floors, foundations, walls, roof, joists, beams and any other parts of the site and buildings are in such a strong and fit condition that the work can be carried out safely and are suitable for the Company's materials and services and for carrying the loads distributed.

### 3. VALIDITY

All quotations are valid for a period of 30 days from the date therein unless expressly stated to be valid for a shorter or longer period and if longer thereafter will be subject to confirmation before acceptance or order.

### 4. TERMS OF PAYMENT

(i) Terms of payment by the Purchaser shall be:-

a) On all contracts for the Supply of Goods or Services within 30 days from the date of invoice, although, at all times and notwithstanding the foregoing the Company reserves the right to demand immediate payment prior to supply of the Goods or Services or to call for payments by instalments comprising interim progress payments and a final payment in accordance with schedules previously agreed with the Purchaser. When it is agreed that interim and final payments are to be conditional on the issue of the Architect's Certificate payments shall be made within 21 days of the date of such Certificate.

b) The Purchaser shall be deemed to have taken over the goods on the date of practical completion and minor defects that do not affect their use for the purpose of which they were intended shall not delay the terms of payment.

(ii) Time for payment shall be of the essence of the Contract and the Company shall be entitled to charge at a rate equivalent of four per centum above the base rate of the Company's Bankers, on all overdue accounts and in addition may postpone the fulfilment of its own obligations and suspend work until such overdue payment is made.

(iii) No dispute arising as to quality or performance of the Goods or Services or defects or omissions shall entitle the Purchaser to delay payment unless the Company shall agree liability thereon in an agreed sum or shall have been found liable by a Court of competent jurisdiction.

### 5. PRICES

(i) All prices quoted are net of Value Added Tax unless otherwise stated.

(ii) All prices quoted for Goods or Services are subject to fluctuation in the cost of labour, materials, transport, overheads, currency exchange rates, taxation, Government Orders and Regulations, whether new or existing, or other like factors outwith the Company's reasonable control and any increase in such costs after the date of quotation and up to the date of delivery will be added to the contract price.

(iii) The Company reserves the right to make an additional charge in respect of variations requested by the Purchaser to the terms and specifications of the Contract or for work to be carried out other than during normal working hours.

(iv) The Purchaser shall not be entitled to any claim in respect of any repairs or alterations undertaken by the Purchaser without the written consent of the Company.

(v) Contract price adjustment. The price(s) stated in our proposal is (are) based on the costs of raw materials and labour as at the date of the proposal. If any fluctuation in these costs that is beyond our control, results in an increased cost to us in performing our obligations under a contract, we reserve the right to pass any such increase on to the purchaser

### 6. RISK AND TITLE

(i) Risk shall pass to the Purchaser when the Goods or a relevant part thereof leave the premises of the Company for the delivery to the customer notwithstanding that the Company may arrange for delivery so that the Purchaser is responsible for all subsequent loss, damage or deterioration.

(ii) Notwithstanding delivery and the passing of risk in the Goods or any other provision of these conditions the property in the Goods shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other Goods or items agreed to be sold by the Company to the Purchaser in respect of which the Purchaser is indebted to the Company whether or not payment is then due as a result of any period of credit having been agreed. Until such time as the property in the Goods passes to the Purchaser, the Company shall be entitled at any time to require the Purchaser to deliver up the Goods to the Company and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or any third party where the Goods are stored and to repossess the Goods.

(iii) The Purchaser shall not be at liberty to sell the Goods purchased from the Company prior to the passing of title on the understanding that if the Purchaser does sell the Goods then the Purchaser will hold on trust for the Company so much of the proceeds of sale received by the Purchaser under contracts which include any of the Goods hereby sold either in their original or altered state as necessary to discharge payment in full to the Company.

### 7. DELIVERY

(i) Time for delivery and performance is given in good faith as accurately as possible but it is not to be of the essence of the Contract. The Purchaser shall have no right to damages or to impose penalties or to cancel the order for delay from any cause unless agreed by the Company in writing.

(ii) Without prejudice to Condition 7(i) hereof time for delivery and performance shall in every case be conditional upon receipt of final instructions being obtained from the Purchaser within seven days of the date of the Purchaser's written order and all necessary approvals by the Purchaser being obtained forthwith upon request.

(iii) The Purchaser shall notify the Company in writing of all necessary forwarding instructions within seven days of notification that the goods are ready for dispatch. The Company will endeavour to comply with reasonable requests by the Purchaser for postponement of delivery but shall be under no obligation to do so. Where delivery is postponed otherwise than due to default by the Company the Purchaser shall pay all costs and expenses including a reasonable charge for storage and transportation occasioned thereby and the Company shall be entitled to invoice the goods in accordance with these Conditions.

(iv) Dates quoted for delivery of orders not requiring installation by the Company refer to dates upon which the Goods are ready for dispatch but dates quoted for delivery of orders requiring installation refer to dates on which the Goods will arrive on site.

(v) Unless otherwise specified delivery shall be made of all Goods to the nearest convenient unloading point (either road or rail) to the Purchaser's works or appropriate site and the Purchaser shall be responsible to notify the Company of any restriction of access such as weight, width, height or loading hours for unloading vehicles or containers and transportation to the site of erection. The Company shall have the sole right to determine the relevant unloading point.

(vi) If deliveries are required over a period extending over 14 days each consignment shall be considered as a separate transaction and invoiced separately.

### 8. DAMAGE IN TRANSIT, NON-RECEIPT, RETURNED GOODS

(i) All goods and materials shall be examined by the Purchaser on delivery. The Company shall not be liable for claims in respect of shortage or damage in transit unless the Carrier and the Company is notified in writing within three days of delivery or in the case of non-delivery notice in writing is given in respect thereof within fourteen days of the date of notice of dispatch of the Goods from the Works of the Company or its subcontractors. In the absence of written notice the Goods will be deemed to have been received in the correct quantity and free of defects which would have been apparent on inspection.

(ii) Credit for shortage or damage will only be allowed when the Company's conditions in the preceding sub clause are met.

### 9. CANCELLATION

Cancellation will only be accepted by the Company on condition that the costs and expenses and the loss of profits and other loss or damage sustained by the Company (as to which in the absence of agreement between the Parties the Certificate of the Auditor of the Company shall be conclusive) will be reimbursed by the Purchaser to the Company forthwith.

### 10. INSTALLATION

(i) When work on the site is undertaken the Purchaser shall provide:-

- a clear and level site with sufficient space adjacent for the placing of material and shall supply the necessary foundations and temporary cover over the site to protect the Goods and construction work effectively from the elements;
- water, light, compressed air, power, lifting tackle and fork lift truck with driver necessary in connection with the erection and shall undertake all filling in or making good of floors, roofs, provision of cover plates over inspection pits and any other civil engineering work, including removal of rubbish;
- a satisfactory and continuous means of access to the site free from all obstructions together with off loading facilities and parking facilities for vehicles of the Company, its employees and agents; and
- health and welfare facilities which may be required by law under regulations current from time to time for employees of the Company while they are engaged at the Purchaser's premises in the performance of the Contract.

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t: **0845 880 2626** visit us at [www.Hero-Locker.co.uk](http://www.Hero-Locker.co.uk)

All service connections, permanent and temporary for fuel, electricity, air, water and drains, both to main plant and auxiliary equipment shall be the responsibility of the Purchaser.

- (ii) The Purchaser shall indemnify the Company in respect of all claims made or proceedings taken against the Company by any third party including, but not limited to employees of the Company, the Purchaser's employees or the employees of any Contractor employed by the Purchaser or the personal representatives or dependants of any such employees or any other third parties in respect of personal injury or damage to property (including damage as a result of fire or explosion) caused by or arising out of the Goods and Services in any manner whatsoever, except where it is proven that the Company or its employees have been negligent.
- (iii) All persons provided by the Purchaser to assist the Company shall in all respects remain employees of the Purchaser.
- (iv) The Purchaser shall ensure that the Company is able to carry out its work with continuity and without hindrance and any expense incurred by the Company as a result of the Purchaser's failure to do so shall be charged extra.
- (v) The Company shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations.
- (vi) Where Contractors other than those employed by the Company are involved their programmes will be arranged by the Purchaser to permit the Company's work to be carried out with continuity and with one visit to the site. Should the Company be subject to delays or require to make a return visit or return visits to the site additional cost will be chargeable to the Purchaser.
- (vii) On completion of the contract all surplus material by the Company shall, unless otherwise agreed, remain the property of and be removed from the site by the Company. Until such material is removed the Purchaser shall take reasonable precautions for the sole custody of such surplus materials.

#### 11. RECTIFICATION

Except in accordance with Condition 15 or otherwise agreed in writing the Company shall not be liable for the cost of rectifying Goods or Services.

#### 12. LIABILITY

- (i) Save where the Company is shown to have failed to exercise reasonable care in the manufacture and/or supply of Goods the company shall not be liable in any circumstances in respect of death or personal injury and under no circumstances whatsoever shall the Company be liable for consequential loss (including removal or rectification work required in connection with installation of repaired or substituted Goods) loss of profits or damage to property.
- (ii) Without prejudice to sub-paragraph (i) of this Condition where the Goods are supplied for the purpose of a business the Company's liability whether in respect of one claim or the aggregate of various claims, (other than claims for death or personal injury due to negligence on the part of the Company) shall not exceed £1,000,000 and the Purchaser agrees to insure adequately to cover such claims in excess of such amount.

#### 13. DESCRIPTION, DRAWINGS, DATA, CONFIDENTIAL INFORMATION

(i) The Company reserves the right to change and improve the design of some or all the component parts included in the quotation and thereafter supplied accordingly.

- (ii) All drawing documents or other information supplied by the Company are supplied on the express condition that the Purchaser will not without the written consent of the Company:-

- a) give away, lend, exhibit or sell any such drawings or extracts therefrom or copies thereof;
- b) use them in any way except for the purpose of installing or operating the Goods for which they are issued;
- (iii) All illustrations, weights, measures, temperatures, capacities and performance schedules contained in the Company's printed brochures and sales literature form no part of the Contract. The Purchaser shall be responsible for the accuracy of all information and drawings supplied by it and the Company shall not be under any responsibility to check the accuracy thereof. Copyright and other intellectual property rights in respect of all drawings and other documents prepared by the Company shall vest in and remain the property of the Company.

#### 14. TRADEMARKS, PATENTS, COPYRIGHT

Where Goods or Services consist of any article to be manufactured, altered or worked upon by the Company in accordance with the design, specifications or instructions of the Purchaser, the Purchaser warrants that any such article shall not in any way infringe any letters patent, copyright or any other protection subsisting in favour of third parties and agrees to indemnify the Company against all actions, claims and demands, including any costs and expenses incurred by the Company. In the event of any claim being made against the Purchaser in respect of infringement of letters patent, copyright or other protection in respect of Goods or Services designed and supplied by the Company, the Company shall be at liberty at its absolute discretion to conduct all negotiations for the settlement of any such claim or any litigation or proceedings which may arise therefrom.

#### 15. GUARANTEE

- (i) Save as otherwise provided by the other conditions of these conditions Sections 12 to 15 of the Sale of goods Act 1979 are to be implied into this Contract.
- (ii) In the event of the condition of the Goods being such as might or would (subject to these Conditions) entitle the Purchase to claim damages or to repudiate the Contract the Purchaser shall not then do so but shall first ask the Company to repair or supply satisfactory substitute goods and the Company shall thereupon be entitled at its option to repair or take back the defective Goods and to supply satisfactory substitute Goods free of cost and within a reasonable time. If the Company does so repair or supply satisfactory substitute Goods the Purchaser shall be bound to accept such repaired or substituted Goods and the Company shall be under no liability in respect of any loss or damage whatsoever arising from the initial delivery of the defective Goods or from the delay before the defective goods are repaired or the substitute Goods are delivered.

#### 16. FORCE MAJEURE

The Company shall be under no liability for any delay, loss or damage caused wholly or in part by Act of God, governmental restriction condition or control or by reason of any act done or not done pursuant to a trade dispute whether such dispute involved the Company's servants or not by reason of any other act, matter or thing beyond the reasonable control of the Company.

#### 17. WRITTEN TRADE REFERENCES

The Purchaser shall, if required by the Company, provide three satisfactory written trade references.

#### 18. PLANNING PERMISSION, LICENCES, REGULATIONS, BY-LAWS

- (i) No responsibility is accepted by the Company for failure to comply with any statutory or other regulations or local by-laws affecting the siting, use, operation or construction of the Goods. All consents and approvals required shall be obtained by the Purchaser.
- (ii) All fees or charges made by Local Authorities in connection with regulations or the passing of plans will be payable by the Purchaser.

#### 19. LAW AND JURISDICTION

The Contract shall be governed and construed in all respects in accordance with the Laws of Scotland and shall, unless the Company otherwise determines be subject only to the jurisdiction of the Scottish Courts.

#### 20. RIGHT OF SET-OFF (AND COUNTER CLAIMS)

No right of set-off shall exist in respect of any claims by the Purchaser against the Company and the Purchaser shall not withhold all or any part of any payment which has become due to the Company for work done for any reason whatsoever.

#### 21. ASSIGNATION BY THE PURCHASER

The Purchaser shall not make any composition or arrangement with or assignation for the benefits of his creditors in respect of the Company's Goods or Services without the Company's agreement in writing.

#### 22. GENERAL

- (i) Waiver by the Company of any breach of the Contract by the Purchaser shall not be considered as a waiver of any such subsequent breach of the same or any other provision.
- (ii) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and remainder of the provision in the question shall not be affected thereby.
- (iii) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoices or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- (iv) The Company's employees or sub-contractors are not authorised to make any representations concerning the Goods or Services unless confirmed by the Company in writing. On entering into the Contract the Purchaser acknowledges that it does not rely on, and waives any claims for breach of, any such representations which are not so confirmed.
- (v) Any reference in these Conditions to the provisions of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

#### 23. TERMINATION

The Company shall be entitled to terminate the Contract by written notice to the Purchaser in the event that:-

- (i) The Purchaser commits any material breach of any of the provisions of the Contract and in the case of a breach which is capable of remedy fails to remedy it within 30 days of receipt of a written notice requiring it to be remedied; or
- (ii) The Purchaser (being an individual or firm) becomes apparently insolvent or is sequestrated or (being a Company) enters into liquidation whether voluntarily or compulsory (save for amalgamation or reconstruction of a solvent company) or has a Receiver appointed; administration order made in relation to it, enters into an arrangement or composition for the benefit of creditors; or ceases or threatens to cease to carry on business or suffers any diligence to be levied on its goods.

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