

Agreement of Terms and Conditions

of Business with Smart Hoist UK Ltd and Customers

Background

- Smart Hoist UK Ltd ("**Smart Hoist**" or "**Supplier**") is a company incorporated and registered in England and Wales with company number 15365997 whose registered office is at Owston Road Carcroft, Doncaster, United Kingdom, DN6 8DA.
- Smart Hoist is a supplier of construction site AI software and hardware System(s) for that purpose. Smart Hoist sells or rents hardware System(s) and provide AI software features to customers and this agreement covers the terms of business with its **Customers**.
- Where Smart Hoist rents and installs System(s) it is the customer's responsibility to take proper care of the System(s) as detailed below. Where Smart Hoist sells and installs System(s), upon successful installation and sign-off by the customer, the responsibility of that System(s) passes over to the customer. In both circumstances for the proper functioning of the System(s) it is imperative that the System(s) is kept and maintained as instructed here or in the manuals provided.
- Smart Hoist will also provide an ongoing regularly maintenance service for rental System(s) and can also provide a similar maintenance package for purchased System(s) should the customer wish.
- **CIS Exempt:** Smart Hoist UK Ltd is a **Supplier**, not a subcontractor and is CIS Exempt.
- Smart Hoist will not engage in business until it has had a quote accepted and received a purchase order upon which both parties will be bound by these terms.

Customer's Obligations

- **Use of System(s).** The customer shall use the System(s) only in accordance with the instructions and recommendations of the Supplier of the System(s) and as instructed by the Supplier at installation or as may be advised by the Supplier from time to time.
- **Training.** Following initial training by the Supplier, the Customer shall train and advise all of their staff whom may operate the system/s in its use and functionality in accordance of how they were trained.
- **Malfunction reports.** The Customer shall report that the System(s) is defective or malfunctioning or has failed or is otherwise not in Good Working Order either in email or by telephone, within 24 hours.

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- **Not tamper with the System(s) or cables.** The customer shall not allow any other person than the Supplier's representatives to adjust, maintain, repair, replace or remove the System(s) or any part of it, unless otherwise agreed by the Supplier.
- **Movement of System(s).** The Customer shall not move the System(s), or fixed cables from the installation point at the Location without the prior consent of the Supplier.
- **Power supply.** The Customer shall not switch the power off during operating times.
- **Cables.** The Customer shall not interfere, compress or cut cables connecting the System(s) or system.
- **Lost, damaged or stolen System(s).** Any lost, stolen or damaged System(s) will be charged to the customer.
- **Internet signal.** Should System(s) require internet signal for some of its functionalities and in the unlikely event this is not available at the agreed installation point or base station, the Supplier has the right to move the installation point and System(s) to achieve signal.
- **Safety.** The Customer shall take all such steps as may be necessary to ensure the safety of any of the Supplier's representatives when attending the Location.

Smart Hoist's (or the Suppliers) obligations

- **Provision of information.** Smart Hoist shall provide to the Customer from time in writing with such up to date and accurate information as to the application and use of the System(s) as deemed necessary by Smart Hoist. Smart Hoist shall respond promptly, and no later than 24 hours during Business Hours, by telephone or in writing, as appropriate, to any request from the Customer for information concerning the application and use of the System(s), or arrange the repair of any defect in or malfunctioning of the System(s).
- **Pre Installation Plan.** Unless agreed otherwise with the Customer, Smart Hoist will carry out an installation plan including RAMS.
- **Planned Preventative Maintenance (PPM):** for rental System(s), or purchased System(s) with agreed maintenance, Smart Hoist will carry out digital and physical planned preventative maintenance (PPM) during Business Hours.
- **System(s) malfunction discovered** during PPM by Smart Hoist and corrective maintenance. If the Supplier's engineer discovers that the System(s) is malfunctioning or is not in Good Working Order during the course of the PPM the engineer will use all reasonable endeavours to repair or replace it during that visit at the location.
- **Corrective or Emergency Maintenance** discovered by customer. On the Customer informing the Supplier that the System(s) is defective or is malfunctioning or has failed or is not otherwise in Good Working Order, the

Supplier shall use all reasonable endeavours to ensure that one of its representatives shall: attend the Location during Business Hours as soon as possible and no later than within 5 business days to perform Corrective Maintenance.

- **Good working order of System(s).** After every installation or maintenance activity (emergency or otherwise) Smart Hoist will ensure the System(s) is in good working order.

- **Health and safety compliance.** The Supplier shall ensure that its representatives, while on site at the Location, shall comply with the Customer's reasonable health and safety and security policies provided that these have been brought to the attention of its representatives.

Invoicing and Payment

- **Invoicing.** The Supplier shall invoice the Customer upon the completed installation of the System(s). The purchase System(s) will be charged after delivery. The installation and set-up fee of the Rental System(s) will be charged directly after installation and the software subscription fee of the Rental System(s) will be charged 4 weeks ahead.

- **Payment timing.** The Customer shall pay each invoice submitted to it by the Supplier within 30 days of the invoice date to a bank account nominated in writing by the Supplier.

- **Failure to pay.** If the Customer fails to pay the Supplier any sum due:

- o the supplier may charge and the customer shall pay interest on the overdue sum from the due date until payment of the overdue sum at 8% above the Bank of England's base rate on an annual basis.

- o the Supplier may suspend all or part of the Services until payment has been made in full.

- o The Supplier may turn off and retrieve all System(s) from the customers site and be unobstructed in doing so.

Tax and set-off

- All sums payable to the Supplier under this agreement are inclusive of VAT which is payable unless expressed otherwise by the Supplier

Insurance Cover and Limitation of Liability

- Employers' Liability. The Supplier has obtained insurance to provide Employers' Liability cover for death, bodily injury, illness or disease sustained by any employee arising out of his employment, with a limit of indemnity of £10,000,000 any one occurrence.
- Public & Product Liability. The Supplier has obtained insurance to provide Public & Product Liability cover in respect of the death of or injury sustained by third parties and/or damage to third party property arising out of their business, with an indemnity limit of £5,000,000 any one occurrence.
- Professional Indemnity. The Supplier has obtained insurance to provide Professional Indemnity cover against claims for damages and claimants costs for breach of professional duty, due to a negligent act, error or omission made against him during the period of insurance, with a limit of indemnity of £2,000,000 any one claim.
- The insurance cover provided is subject to the insurers policy wordings, terms, conditions and exclusions.

Termination

- Either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

- b) the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

- The Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if the Supplier reasonably determines that all or substantially all of the System(s) can no longer be maintained in Good Working Order by the provision of Spare Parts or all or substantially all of the System(s) is damaged beyond economic repair otherwise than through the Supplier's fault.

Consequences of termination and survival Unpaid invoices and survival.

On termination or expiry of this agreement:

- the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice for those Services only, which shall be payable immediately on receipt.

- **Accrued rights.** Termination or expiry of this agreement 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 agreement which existed at or before the date of termination or expiry.

Confidentiality

- **No disclosure of Confidential Information.** Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination or expiry of this agreement, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by **Exceptions**. Each party may disclose the other party's Confidential Information:

- a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors,

subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16; and

b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

· **Restrictions on use of Confidential Information.** No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

General

· **Force Majeure.** Neither party shall be in breach of this agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 weeks, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.

· **Entire agreement.** This agreement constitutes the entire agreement between the parties.

· **Third party rights.** This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

Governing law

· This agreement 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.