



HEAVY DUTY JACKING SYSTEMS

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Terms and Conditions for the Provision of Contract Services

1. DEFINITIONS

1.1 "the Conditions" means Hydra Capsule Ltd Conditions of Contract for the Provision of Services;

1.2 "the Contract" means the agreement concluded between Hydra Capsule and the Supplier, including the Specification, the Conditions, the Supplier's tender (if any), Hydra Capsule' Order and any other documents listed therein;

1.3 "Order" means Hydra Capsule' official written order setting out and/or incorporating by reference the terms and conditions of Hydra Capsule' offer and specifying (as appropriate and without limitation) the Services to be provided; the Price; the Duration; details of or reference to any Specification and Warranty Period(s);

1.4 "the Price" means the price exclusive of VAT accepted by Hydra Capsule as payable to the Supplier for the supply of Services in accordance with the Contract and shall be fully inclusive of all costs including but not limited to labour payroll costs and payroll burden, materials, plant, and equipment together with all overheads and profit;

1.5 "Payroll Burden" means all additional payroll costs, including but not limited to, any or all of the following costs, where applicable; incentive payments, holiday pay and stamps, sick leave pay, any payroll tax, levy, contribution or payment for which the Supplier is liable as an employer, general expenses, Employee Benefits, personal protective equipment and non-powered hand tools, all training, briefings on standards/statute and/or procedures, fees, medicals and the like including the employee's time in attending the same;

1.6 "Employee Benefits" shall include but not be limited to, company car and fuel allowances and expenses, private medical insurance, permanent Health Insurance, Life Insurance and other benefits.

1.7 "Hydra Capsule" means Hydra Capsule Ltd (registered in England under number 454872813), whose registered office is Hydra House, Bishops Frome, Worcestershire, WR6 5BP, United Kingdom and its successors and/or permitted assignees;

1.8 'Hydra Capsule' Brief' means Hydra Capsule requirements for the provision of services referred to or described in the Order against which the Services are to be supplied, and any modification to them that may be agreed in writing.

1.9 'Hydra Capsule Standard Payment Terms' referred to in the Order means the payment terms described in Condition 11 of these Conditions.

1.10 'Hydra Capsule's Representative' means the person or persons in the Order appointed for the time being by Hydra Capsule to act on his behalf in carrying out those duties described in the Contract.

1.11 'Services' means the services, duties and responsibilities to be provided, performed and observed by the Supplier pursuant to this Contract and the Order.

1.12 'Supplier' means the person or persons named in the Order and whose tender is accepted by Hydra Capsule and his or their, successors and/or permitted assignees, employees, agents, subcontractors and sub-suppliers and the employees and agents of subcontractors and sub-suppliers.

2. DURATION

2.1 The Supplier shall commence the provision of the Services on the Commencement Date shown in the Order and shall continue to provide the Services until the Completion Date shown in the Order or termination of the Contract as provided in Condition 15.3 or 15.4.

3. KEY PERSONNEL

3.1 The Supplier agrees that where the Services are to be performed by key personnel named in the Order, no changes in the key personnel shall be made without the prior approval of Hydra Capsule's Representative, which shall not be unreasonably withheld.

4. CONSTRUCTION INDUSTRY SCHEME

4.1 Where the Supplier is a Subcontractor as defined under the Construction Industry Scheme ("the CIS"), they shall provide, details of their Unique Taxpayer Reference (UTR) number as per the requirement of HM Revenue and Customs.

4.2 The Supplier undertakes to discharge all of their obligations as a "Subcontractor" under the CIS and to provide such other assistance to Hydra Capsule as is required to enable them to discharge their obligations as a "Contractor".

4.3 If any dispute, difference or question arises between either Hydra Capsule or the Supplier and the Inland Revenue in relation to any tax payable, or alleged to be payable, in connection with the Contract, Hydra Capsule and the Supplier shall render to one another such support and assistance as may be necessary to resolve the dispute, difference or question.

4.4 In the event that;

- a) Any amount is deducted by Hydra Capsule from the Supplier in respect of tax which should not have been deducted; Hydra Capsule shall repay such amount to the Supplier.
- b) Hydra Capsule fail to deduct from the Supplier, an amount in respect of tax which should have been deducted, the Supplier shall repay such amount to Hydra Capsule.



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5. HYDRA CAPSULE BRIEF

5.1 Without prejudice to or limitation of Hydra Capsule's statutory rights, the Services shall comply in all respects with Hydra Capsule's Brief, and if no such Brief is referred to in the Order, the Services shall be of the best quality appropriate for the purposes (if any) specified by Hydra Capsule.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Unless otherwise agreed in writing between the parties, all copyright, design rights and other intellectual property rights in any work which is developed in the course of the provision of the Services shall be vested in Hydra Capsule and the Supplier shall do all things and render all such assistance as may be reasonably required by Hydra Capsule Rail in order to vest such rights in Hydra Capsule.

6.2 Any plans, drawings, documents, handbooks, codes of practice or other information (the "Documents") provided by Hydra Capsule pursuant to the Contract shall at all times remain its property and the Supplier shall not use, reproduce, disseminate, adapt, transmit in any form or by any means the Documents or any part thereof or permit the same to be so used, reproduced, Disseminated, adapted or transmitted as aforesaid or published other than for the purposes of carrying out its obligations under the Contract.

6.3 The Supplier hereby grants to Hydra Capsule an irrevocable, non-exclusive, royalty-free licence to use for any purpose in connection with the Services all the Supplier's intellectual property which the Supplier has used or supplied in connection with the Services, provided that the Supplier shall have no liability for any use of such intellectual property other than for the purposes for which it is intended. Hydra Capsule may grant sub-licences out of the said licence.

6.4 The Supplier shall indemnify Hydra Capsule against all loss, damage, costs and expenses for which Hydra Capsule is or becomes liable as a result of any infringement or alleged infringement by the Supplier of any third party's intellectual property rights.

7. CONFIDENTIALITY

7.1 The Supplier agrees to keep all documents supplied to it by Hydra Capsule or which are created in connection with this Contract and the Services and all other matters arising or coming to its attention in connection with the provision of the Services secret and confidential and not at any time for reason whatsoever to disclose them or permit them to be disclosed to any third party except as permitted hereunder to enable the Supplier to carry out its duties and obligations. The Supplier's obligations under this Condition shall survive the expiry or the termination of the Contract for whatever reason.

8. LIABILITY

8.1 Hydra Capsule will be relying upon the Supplier's skill, expertise and experience in the provision of the Services and also upon the accuracy of all representations or statements made and the advice given by the Supplier in connection with the provision of the Services and the accuracy of all contractual documentation and the Supplier hereby agrees to indemnify Hydra Capsule against all loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by Hydra Capsule or by a third party as a result of such reliance.

8.2 The Supplier accepts:

- a) Liability for death and personal injury howsoever resulting from the Supplier's negligence; and
- b) Liability for damage to property resulting from the Supplier's negligence where such negligence has arisen or arises in connection with the provision of the Services or in connection with any other activities undertaken by the Supplier pursuant to or for any purpose related to the Contract; and
- c) The Supplier hereby agrees to indemnify Hydra Capsule against all and any liability, loss, damage, costs and expense of whatsoever nature incurred or suffered by Hydra Capsule or by any third party whether arising from any disputes, contractual, tortious or other claims or proceedings which seek to recover loss and damage incurred by reason of any such death, personal injury or damage to property in relation to the provision of the Services.

8.3 The Supplier undertakes to:

- a) Maintain, at its own cost, employer's liability insurance for the amount of £10,000,000 (ten million pounds) or such other amount as may be stated in the Order, in respect of any one occurrence or series of occurrences arising out of one event.
- b) Maintain, at its own cost, public liability insurance for the amount of £1,000,000 (one million pounds) or such other amount as may be stated in the Order, in respect of any one occurrence or series of occurrences arising out of one event.
- c) Maintain (where stated as applicable in the Order), at its own cost, professional indemnity insurance for the amount of £1,000,000 (one millions pounds) or such other amount as may be stated in the Order, in respect of any one occurrence or series of occurrences arising out of one event to ensure that its activities under the Contract are insured and remain insured under an annual professional indemnity policy or policies (if applicable).

8.4 The provisions of this Condition 8 shall survive the termination of the Contract for any reason.

9. ACCESS TO THE SITE AND SAFETY REQUIREMENTS

9.1 The Supplier shall comply with the safety requirements and the requirements for access to the site set out in any specification or otherwise stipulated by Hydra Capsule and shall procure that its employees, agents, sub-contractors and sub-suppliers comply with such requirements.

10. INVOICING

10.1 Sums contained in invoices shall be calculated in accordance with the Price. Invoices must be forwarded to Hydra Capsule in accordance with the provisions of the Contract. Unless otherwise agreed in writing, invoices must be dated no earlier than the latest date of the Services to which the invoice relates, and must show any applicable trade or settlement discount. Invoices must conform with all requirements set out from time to time in legislation relating to tax invoices, and



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10.2 Where the Services are to be provided on an "hourly" basis, the sums claimed shall be accompanied by appropriate Timesheets and/or Allocation sheets, signed by a Hydra Capsule Representative and contractor/subcontractor.

10.3 The Invoice shall specify the Contract reference number, Order Number, a description of the Services, and such other particulars as it may be appropriate to supply.

11. PAYMENT

11.1 Provided that the Services have been supplied in accordance with the Contract, the Supplier shall submit a request for payment to Hydra Capsule together with all necessary supporting documentation. Within 14 days of receipt of this application Hydra Capsule will either confirm that the amount requested is correct or inform the Supplier of the amount due.

11.2 The Supplier will then raise an invoice for the amount due and without prejudice to its rights under Condition 17 Hydra Capsule shall pay the Supplier in respect of that invoice no later than forty five days from the end of the month in which the invoice is dated.

11.3 Where pursuant to Condition 4, the Supplier is a Subcontractor under the CIS; they shall provide such additional information as Hydra Capsule may reasonably request to enable the payment to be made in accordance with requirements of the CIS. As a minimum, the Supplier shall ensure that all invoices bear, in addition to the information noted in 10.3;

- a) A breakdown of the invoice amount between "Net Labour" and "Materials", as defined in the CIS;
- b) A summary of the actual hours worked within the Net Labour amount

11.4 Payment by Hydra Capsule shall be without prejudice to any claims or rights which Hydra Capsule may have against the Supplier and shall not constitute any admission by Hydra Capsule as to the performance by the Supplier of its obligations hereunder.

12. VALUE ADDED TAX

12.1 Hydra Capsule shall pay to the Supplier upon receipt of a valid VAT invoice, in addition to the Price, a sum equal to the Value Added Tax properly chargeable on the value of the supply of Goods provided in accordance with the Contract.

12.2 Any overpayments by Hydra Capsule to the Supplier in respect of VAT shall be a sum of money recoverable from the Supplier in accordance with Condition 17, and the Supplier shall issue a valid VAT credit note in an appropriate amount to Hydra Capsule.

12.3 If any dispute, difference or question arises between either Hydra Capsule or the Supplier and the Commissioners of Customs and Excise in relation to any tax chargeable, or alleged to be chargeable, in connection with the Contract, Hydra Capsule and the Supplier shall render to one another such support and assistance as may be necessary to resolve the dispute, difference or question. In the event that any amount is paid by Hydra Capsule to the Supplier in respect of VAT which is not properly chargeable, the Supplier shall repay such amount to Hydra Capsule.

12.4 Where under the Contract one party has agreed to reimburse or indemnify the other in respect of any payment made or costs incurred by the other then the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent that such VAT is not available for credit for the other or any person with which the reimbursed or indemnified party is treated as a member of a group for VAT purposes, as input tax, under the current Value Added Tax legislation.

13. ASSIGNMENT AND SUB-LETTING

13.1 The Supplier shall not assign or transfer the Contract or any part share or interest therein or thereunder. Hydra Capsule may assign or transfer the Contract or any part share or interest therein or thereunder.

13.2 The Supplier shall not sublet the whole or any part of the Contract without the prior written consent of Hydra Capsule which consent shall not be unreasonably withheld.

14. STATUTORY AND OTHER REGULATIONS

14.1 The Supplier shall comply in all respects with the law, including, without limitation, common law, Acts of Parliament (whether general, local or personal), rules, orders, regulations and/or byelaws of any Minister, department or office of Her Majesty's Government, local authority and/or of any public service or authority.

14.2 Without prejudice to any other rights Hydra Capsule may have, if the Supplier does not fulfil his responsibilities and obligations under the Contract and Hydra Capsule thereby incurs costs for which it would not otherwise be liable due to any law or any order, regulation or bye-law having the force of law, the Supplier shall indemnify Hydra Capsule against all such costs.

15. TERMINATION

15.1 The Contract shall terminate automatically on the Completion Date (as defined in Condition 2).

15.2 In this Condition, "insolvency" shall include:

- a) the presentation of a bankruptcy petition where the petitioner is the Supplier, the making of a bankruptcy order, the appointment of an interim receiver and the issue of proposals by the Supplier to creditors for any arrangement or composition with creditors (whether as a voluntary arrangement under the current Insolvency legislation or otherwise) or for a conveyance or assignment for the benefit of creditors, whether under the current Deeds of Arrangement legislation or otherwise;
- b) Where the Supplier is a partnership, the insolvency of any partner, the presentation of a petition by the members of the partnership to wind up the partnership as an unregistered company under the current Insolvency legislation; the making of



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an order to wind up the partnership as an unregistered company as aforesaid; the presentation by the members of the partnership of a petition for the making of an administration order in respect of the partnership; the making of an administration order; the issue of proposals by the members of the partnership to its creditors for a voluntary arrangement;

- c) Where the Supplier is a company, when (in respect of that company or its Holding Company) any of the following occurs: the passing of any resolution for the winding-up of the company (except for the purposes of amalgamation or reconstruction); the making by the court of a winding-up order; the appointment of a provisional liquidator; the presentation by the company or its directors of a petition for or the making of an administration order the issue by the company of proposals to creditors for the making of any arrangement or composition with creditors (whether as a voluntary arrangement under the current Insolvency legislation, or a scheme of arrangement under the current Companies legislation, or otherwise) or the appointment of an administrative receiver or a receiver or a receiver and manager in respect of the company or any of its assets;

15.3 If the insolvency of the Supplier occurs, Hydra Capsule may, without prejudice to any other rights it may have to terminate the Contract or any rights it may have against the Supplier in respect of inferior workmanship, breach of the Supplier's obligations under the Contract or otherwise, terminate the Contract forthwith by notice. In that event the Supplier shall be liable to Hydra Capsule for all additional costs, expenses, losses and damages incurred by Hydra Capsule arising from such termination.

15.4 Without prejudice to Hydra Capsule are other rights and remedies, Hydra Capsule may forthwith terminate the Contract by notice if:

- a) The Supplier commits any breach of the Contract and fails to remedy such breach within 14 days of being given written notice to do so by Hydra Capsule; or
b) The Supplier fails to perform its obligations under the Contract with due diligence.

15.5 Termination of the Contract shall not prejudice or affect any right or remedy which has accrued or shall accrue thereafter to Hydra Capsule, and any provision which is expressed to survive the Contract shall remain in full force and effect.

16. GOVERNING LAW AND JURISDICTION

16.1 The validity, construction and performance of the Contract shall be governed by English Law and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of the Contract shall be subject to the non-exclusive jurisdiction of the High Court of Justice in England to which the parties hereto irrevocably submit except where the Services are provided to Hydra Capsule entirely in Scotland, in which case the Contract shall be governed by and construed in accordance with Scottish law and the parties prorogation the non-exclusive jurisdiction of the Scottish Courts.

17. SET OFF

17.1 Without prejudice to Hydra Capsule other rights and remedies, Hydra Capsule may deduct from any sums due to the Supplier under the Contract an amount equivalent to any sums due from the Supplier to Hydra Capsule (whether such sums are due to Hydra Capsule under the Contract or under any other agreement between the Supplier and Hydra Capsule, and if Hydra Capsule considers that the Supplier is in breach of any of his obligations under this Contract, (or any other Contract between Hydra Capsule and the Supplier), the Supplier shall pay or allow to Hydra Capsule such sum as Hydra Capsule' representative estimates to be fair and reasonable in respect of any loss, damage, cost or expense to which Hydra Capsule is or may become entitled by reason thereof.

Such amount may be deducted from any amount which would otherwise be due to the Supplier under this Contract (or any other contract between Hydra Capsule and the Supplier). The exercise of such a right by Hydra Capsule shall be without prejudice to any other rights or remedies which Hydra Capsule may have in respect of any loss, damage, cost or expense to which Hydra Capsule is or may become entitled by reason thereof; provided that for the avoidance of doubt, the Supplier shall in every case issue to Hydra Capsule a value added tax ("VAT") invoice in respect of the VAT properly chargeable on the full value of each supply for VAT purposes.

18. WAIVER

18.1 No failure to exercise or delay in exercising any right, power or remedy under or in connection with the Contract shall operate as a waiver thereof, and no single or partial exercise of any right, power or remedy shall preclude any further or other exercise thereof, or the exercise of any other right or remedy.

19. TRANSFER OF UNDERTAKINGS

19.1 The terms set out in this Condition shall apply on the termination for any reason of the Contract.

19.2 In this Condition 19 the following terms and expressions shall have the following meanings:

- a) 'Indemnified Persons' means Hydra Capsule and any person who following the Termination Date provides the Services to Hydra Capsule;
b) 'Termination Date' means one minute before midnight on the date on which this contract terminates.

19.3 The Supplier shall be responsible for and shall fully indemnify and keep indemnified the Indemnified Persons from and against all and any costs, claims, expenses, damages, demands, actions and liabilities arising from any claim in respect of any person (including, without limitation, the dismissal of such person of Hydra Capsule or any other Indemnified Persons or a change in his terms of employment) which arises or is alleged to arise by reason of the operation of the Transfer of Undertaking (Protection of Employment) legislation as amended or re-enacted from time to time.

19.4 Hydra Capsule shall notify the Supplier on becoming aware of any claim which may give rise to any liability to indemnify the Indemnified Persons under sub-clause 19.3 and shall give to the Supplier such assistance as the Supplier may reasonably require in contesting any such claim.