



Guardtech cleanrooms

Terms & Conditions

TERMS & CONDITIONS

GENERAL

These Conditions shall be incorporated into all contracts between The Guardtech Group, incorporating Cleanroom Solutions Ltd and Guardtech Cleanrooms Ltd, hereafter referred to as ("Guardtech") and any customer ("Customer") for the supply to the Customer of goods and/or services. References to "Goods" means the products manufactured or dealt in by Guardtech and "Services" means the services or works carried out by Guardtech and which are the goods and/or services or works which are the subject of the Contract.

"Contract" means the contract made between Guardtech and the Customer for the supply of the Goods and/or Services and which shall be governed by these conditions and which includes any terms and conditions and related documents or information set out in, or otherwise identified in, the quotation upon which the contract is based or in any Guardtech acknowledgement. These Conditions supersede any earlier conditions appearing in Guardtech's literature or elsewhere.

The placing of any order by the Customer for Goods or Services shall be deemed to be an acceptance of these Conditions. Any terms and conditions stipulated, incorporated or referred to by the Customer whether in its order or in any negotiations or otherwise, are hereby excluded and in any event these Conditions shall prevail over the Customer's terms and conditions.

FORMATION OF CONTRACT

Any quotation submitted by Guardtech does not constitute an offer capable of binding Guardtech. No contract shall come into effect until Guardtech has received satisfactory credit references in respect of the Customer for the Contract and until Guardtech has issued its formal acknowledgement of the Customer's order or other acceptance of Guardtech's quotation/s.

GUARDECH PERSONNEL

Guardtech personnel providing Services and Products shall remain under the supervision and control of the Customer. The Customer has the right to direct removal and replacement of Guardtech personnel. If a replacement is requested, Guardtech shall immediately replace the identified personnel at no cost to the Customer. The Customer shall not offer, promise, initiate an offer to or employ personnel of Guardtech during the term of this Agreement and for one year thereafter.

MANUFACTURERS' CATALOGUES ETC

Particulars of dimensions, capacities, performance ratings, specifications, drawings and other data included in manufacturers' catalogues, price lists or other documents supplied by Guardtech constitute only an approximate guide and shall not be binding upon Guardtech.

VARIATIONS

Guardtech shall not be bound by any variations, waiver or additions to the Contract unless such are agreed in writing.

DELIVERY

Guardtech will deliver or arrange delivery of the Goods to the Customer or to the Customer's agent at the place specified in the Contract for deliveries or, if no place has been specified, at such place as may be agreed in writing. Guardtech shall use its reasonable endeavours to deliver or arrange delivery of the Goods on the dates specified by the Customer or within a reasonable time thereof provided always that the time for delivery shall not be of the essence of the Contract and Guardtech shall not be liable for any loss or damage whatsoever arising directly or indirectly from any failure to effect delivery within such periods. The Customer shall accept deliveries of Goods by instalments.

SERVICES OR WORK ON SITE

The Customer shall provide adequate access to the relevant premises or site and ensure at all times that the working environment is conducive to the health and safety of Guardtech's employees, agents and sub-contractors. The Customer shall indemnify Guardtech against all costs, claims, liabilities and expenses incurred by Guardtech arising from or in connection with any personal injury to or death of any of its employees, agents or subcontractors which is occasioned directly or indirectly by any act or omission (whether negligent or not) on the part of the Customer, its agents or employees.

Guardtech shall have the right to refuse to perform any Services which would bring Guardtech 's employees, agents or sub-contractors into contact with any hazardous substance where Guardtech was not previously informed of such hazardous substance by the Customer or where such hazardous substance was not reasonably apparent from any inspection that Guardtech may have made of the relevant site prior to the giving by Guardtech of any quotation for the supply of the Goods and/or Services.

PAYMENT

The price of the Goods and/or Services shall be as set out in the Contract. All prices are exclusive of VAT and all other applicable taxes and duties, which will be payable in addition to the Contract price at the rate in force at the date of any invoice submitted by Guardtech. Guardtech may require payments to be made by instalments on the basis of a percentage of the total Contract price or as otherwise agreed in writing with the Customer.

Payments shall become due to Guardtech on the date of receipt by the Customer of Guardtech's invoice in the case of contract deposits. Regular valuations shall become due at the end of month following the date of the valuation.

Each invoice shall set out the amount that Guardtech considers to be due and the basis upon which that amount has been calculated.

Guardtech reserves the right to charge interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 and it is agreed that the rights provided under the said Act shall apply after any judgement or binding determination as well as before.

In the event of the Customer being in default of payment of any amount due to Guardtech under the Contract then on giving the Customer 7 days' notice in writing specifying the grounds for so doing, Guardtech may suspend performance of any or all of its obligations under the Contract. Guardtech shall resume its obligations under the Contract within a reasonable time after receipt of any outstanding payment. Any suspension arising under this clause shall entitle Guardtech to payment of its reasonable costs and expenses incurred as a result and the period of suspension shall be disregarded in computing any agreed date for completion of the Works and/or Service and Guardtech shall not otherwise be liable to the Customer in regard to such suspension.

PASSING OF PROPERTY

Until Guardtech has been paid in full for any Goods supplied under the Contract, the Customer holds the Goods in a fiduciary capacity as bailee of Guardtech.

Title to the Goods shall remain with Guardtech and the Customer shall store the Goods in such a manner that they are clearly identifiable as the property of Guardtech.

Guardtech reserves the right to dispose of the Goods and may retake possession thereof at any time for that purpose and may by its servants or agents enter upon any land or premises owned or occupied by the Customer or any subsequent purchaser of the Goods from the Customer and in addition the Customer shall include in any contract with a sub-purchaser a licence in favour of Guardtech covering the right of entering covered in this sub-clause; and if the Customer incorporates or allows the incorporation of the Goods into other goods or products in any way, legal and beneficial title to those other goods, both during the process of incorporation and thereafter shall vest forthwith in Guardtech, and the Customer shall hold them in a fiduciary capacity as bailee for Guardtech; if Guardtech so requires the Customer shall observe the conditions regarding storage in hereof as if such other goods were the Goods originally supplied; and the parties agree that incorporation of the Goods into other goods or products in any way is not intended to extinguish Guardtech's title to the Goods as provided for under these Conditions; and without prejudice to the above the Customer shall (subject to notice from Guardtech to the contrary) have the power to sell the Goods in the normal course of its business on behalf of Guardtech.

The Customer shall notify any subsequent purchaser of the Goods that title to the Goods remains with Guardtech. Any monies received by the Customer from any subsequent purchaser shall be held separately from any monies of the Customer or any other party on behalf of Guardtech and the Customer has a fiduciary duty to account for such monies to the extent of its indebtedness and to this extent is to pay Guardtech any sums received in respect of the Goods.

Notwithstanding the foregoing, risk in the Goods shall pass to the Customer upon the terms below. On receipt of notice from Guardtech, all Goods shall be immediately delivered to Guardtech and/or Guardtech acting by its servants or agents shall have the right without notice during normal business hours to enter upon the land or buildings of the Customer or any subsequent purchaser of the Customer to take possession of the Goods.

The events hereinbefore referred to are:

- Any notice to the Customer that a receiver or manager of all or any part of the Customer's assets is to be or has been appointed.
- Any notice to the Customer that a petition to wind up the Customer is to be or has been presented or any notice of a resolution to wind up the Customer (save for the purposes of reconstruction or amalgamation) has been given or such a resolution has been passed.
- A decision by the Customer that the Customer intends to make an arrangement with its creditors.
- The Customer is unable to pay its debts as defined in Section 123 of the Insolvency Act 1986.
- The Customer ceases to or threatens to cease to carry on its business.

RISK

The Goods shall be at the Customer's risk from the time that they are delivered to the Customer in accordance with the Contract. The Customer shall insure the Goods for the full Contract price against loss or damage arising from any cause whatsoever. If requested by Guardtech the Customer shall execute an assignment in favour of Guardtech of all rights of the Customer to claim against the insurers in respect of the Goods covered by such insurance and shall join Guardtech in notifying such insurers of Guardtech's interest in any policy effected hereunder.

Such insurance (with insurers to be approved by Guardtech) shall be affected by the Customer to cover the period from the time when the risk in the Goods passes to the Customer as provided above to the time when the property in the Goods passes to the Customer and Guardtech's interest as a vendor of the Goods shall be notified by the Customer to the insurers.

CLAIMS IN TRANSIT

Guardtech will not accept any responsibility whatsoever for loss, damage, discrepancy or shortfall to the Goods in transit if carried by a carrier nominated or requested by the Customer or by a carrier who is the servant or agent of the Customer. Claims shall be made immediately by the Customer to the carrier.

Save as provided above, Guardtech will repair, or at its option, replace free of charge, any part of the Goods lost or damaged in transit provided that Guardtech and the carrier are given notice of such loss or damage within the time required by the carrier's conditions of carriage or, where deliveries are made by Guardtech's own transport, within three days of the receipt of the Goods or of the day upon which the Goods should have arrived had they not been lost and provided that any damaged Goods or part thereof are returned carriage paid by the Customer to Guardtech.

ACCEPTANCE PROCEDURE

Goods shall be deemed to have been accepted by the Customer on delivery unless the Customer shall notify Guardtech in writing of non acceptance of the Goods within three days of delivery.

Where the Contract is for the sale and installation of a complete project incorporating Goods, Guardtech shall, unless otherwise agreed, be responsible for the installation, testing and commissioning of the project.

Completion of installation, testing and commissioning and acceptance of a project by the Customer (which the Customer shall not be entitled unreasonably to refuse) shall be evidenced by the signature of a certificate of hand over by an authorised representative of Guardtech and by the Customer or its representative.

CONFIDENTIALITY AND DATA PROTECTION

Each Party acknowledges that, in the course of the performance of its obligations under this contract, it will become possessor of and have access to know how, trade secrets, business, technical, manufacturing, marketing, sales, financial and other proprietary or confidential information relating to a Party's business ("Confidential Information").

Each Party shall:

- keep the Confidential Information of the other Party confidential and use the same care to do so as it uses to protect its own Confidential Information, but at least the usual standard of care applied in business enterprises;
- not disclose or grant access to the Confidential Information or any part thereof to any other person unless the other Party has given its prior written consent thereto, and such other person agrees in writing to be bound by confidentiality obligations identical to those set out in this Section, subject to such changes as the context may require;
- not use the Confidential Information or any part thereof for any purpose other than the performance of its obligations under this Agreement; and
- on demand, but in any event, on termination of this Agreement for any reason whatsoever, immediately return to the other Party, all documents or other records of Confidential Information of that other Party in its possession, regardless of the form of or the media on which such Confidential Information is stored.

- The confidentiality obligations in this Section shall not apply to any Confidential Information of a Party which, at the time of disclosure or any time thereafter, is or becomes part of the public domain through no fault of the other Party; was made known to the other Party prior to disclosure to it in terms of this Agreement, without any obligation to keep such information confidential; or is required by law to be disclosed in a manner that would otherwise be a breach of such confidentiality obligations.

- If either Party discovers any breach or potential breach of the confidentiality obligations in this Section, that Party shall immediately (i) notify the other Party and (ii) investigate the breach and provide the other Party with a complete written report.

- All analyses, memoranda, documents and other deliverables generated by Guardtech during the course of or as a result of this Agreement containing or referring to Confidential Information of the Customer shall be the sole property of the Customer. Upon the expiration or termination of this Agreement, Guardtech shall return to the Customer all Customer Data and property, including without limitation all correspondence, notes, documents, data, records, computer media and programs, specifications, manuals, and all other material and equipment which relate to the business of the Customer.

INTELLECTUAL PROPERTY

Guardtech agrees to, and hereby does, on a non-exclusive basis irrevocably assign and transfer to the Customer all worldwide right, title and interest to any invention, copyrightable work, derivative, development or modification relating to any product, system, process, documentation, data or service of the Customer which is conceived, made or otherwise developed by Guardtech, its employees or its agents, either alone or working jointly with others, in the course of performing or as a result of this contract (collectively "Improvements"). Guardtech further agrees that Improvements constituting copy-rightable works are "works made for hire" under the copyright laws. The Customer agrees that all Guardtech intellectual property logos, documents, technical specifications and images remain the exclusive property of Guardtech unless otherwise agreed in writing with the Customer.

FORCE MAJEURE

Guardtech shall not be liable in any manner whatsoever for any breach of contract or delay in performance of its obligations insofar as such breach or delay arises by reason of circumstances beyond its reasonable control including, without limitation, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to Guardtech's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. Provided that, if the event in question continues for a continuous period in excess of 60 days, the Customer shall be entitled to give notice in writing to Guardtech to terminate the Contract.

SUSPENSION AND TERMINATION

If the Customer fails to comply with any of the terms of the Contract whether a condition or warranty express or implied occurs or if Guardtech reasonably believes that they might occur and notifies the Customer accordingly, then, without limiting any other right or remedy, Guardtech may suspend or terminate all further obligations under the Contract or under any other contract between the Customer and Guardtech without incurring any liability to the Customer, and all outstanding sums shall become immediately due and Guardtech may apply the rights under the contract. In such an event Guardtech will be discharged from further performance of the Contract (subject to the end of any period of suspension as applicable following the rectification of the terms of the Contract to Guardtech's reasonable satisfaction) and the Customer shall forthwith upon demand pay to Guardtech all costs and expenses and overheads incurred in connection with the Contract together with any loss or profit and all sums due to Guardtech hereunder.

WARRANTIES AND LIABILITY

Guardtech warrants that the Goods supplied by it to the Customer under the Contract will be of satisfactory quality and reasonably fit for any purpose made known to Guardtech in writing at the time of Customer's order or agreement and that it will carry out the Services with reasonable skill and care. Subject as aforesaid, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Nothing in these Conditions shall limit or exclude Guardtech's liability for:

- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- fraud or fraudulent misrepresentation;
- breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- defective products under the Consumer Protection Act 1987; or
- any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability; subject to which:
- if Guardtech is found to be in breach of the Contract its liability shall be limited to the cost of repair or replacement of the Goods provided or the re-performance of the Services provided;

Guardtech shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

Guardtech 's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods or Services under the Contract.

LEGAL COMPLIANCE

Guardtech agrees that all activities and work performed, directly or indirectly, by or on behalf of Guardtech under this Agreement shall be carried out in accordance with all applicable laws, regulations and policies of the location where Guardtech is performing, directly or indirectly, such activities and work, and any other governmental authority to which Guardtech, the Services or the Products are subject. Guardtech is solely responsible for such compliance and obtaining all permits and licenses required to perform its obligations under this Agreement.

Compliance with Anti-Bribery Laws: Guardtech prohibits and its authorized agents agree to operate in full compliance with all applicable anti-bribery / anti-corruption legislation in the conduct of their business.

This means that no employee or agent or subcontractor of Guardtech may offer, promise, authorize or deliver any payment, gift of any kind, or anything of value to any government official or employee or any other person or entity, including those in the private or commercial sector, where such an action is in violation of any applicable anti-bribery / anti-corruption legislation or where the purpose is to improperly induce the recipient to take action or refrain from taking action that would provide a benefit or advantage to the Customer or Guardtech or its related entities.

To ensure compliance with this clause, Guardtech shall communicate these requirements to its employees and impose these same compliance requirements on any agents, subcontractors, or other third parties it may hire pursuant to this agreement.

Guardtech hereby acknowledges and agrees that any breach of this clause shall be grounds for immediate termination of this Agreement. Guardtech shall protect, indemnify and hold harmless the Customer from any claim, damages, liability costs, fees and expenses incurred by the Customer as a result of a breach by Guardtech.

Guardtech certifies that none of the Services are or will be performed and that none of the Products are or will be manufactured with child, indentured, forced or prison labor.

Guardtech confirms that it will comply with all applicable data protection laws and requirements. This includes the obligation to comply with new data protection laws and requirements that take effect while the contract remains in effect, and for as long as Guardtech holds or continues to have access to any personal data in relation to this contract.

Guardtech understands and agrees that the confidentiality, data protection and security requirements contained in this contract also apply to any contractors, sub-contractors, temporary employees or other third-parties who may receive access to any personal data or any other confidential or proprietary information from Guardtech under this Agreement. Guardtech will ensure that these parties enter into written agreements with substantially similar confidentiality, privacy and security agreements before they are given access to any personal data accessible to Guardtech in relation to this contract, including the servers or other devices on which the data is stored.

GENERAL

The Customer shall not without the prior written consent of Guardtech assign, transfer or sub let the benefit or burden of the Contract or any part thereof.

If any provision of these Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable it shall to the extent of such illegality, invalidity or unenforceability be deemed severable and the remaining provisions of these Conditions shall continue in full force and effect.

The Contract is not intended to confer a benefit on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, and no third party shall have any right to enforce any of the provisions of the Contract. No delay by either party in enforcing any of the provisions of the Contract shall be deemed a waiver of that party's right subsequently to enforce such provision.

DISPUTE RESOLUTION

English law shall apply to the Contract.

Subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation. Either party may refer a dispute arising under the Contract to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this clause. The adjudicator shall be nominated by the Royal Institution of Chartered Surveyors.

The parties irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).