

Business Terms and Conditions



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1 DEFINITIONS

Acknowledgement	Huxleys' acknowledgement of an Order
Contract	The contract or proposed contract comprising, in order of priority, the details on the Acknowledgement, the Order, and these terms and conditions
Customer	The customer named on the Order
Estimated Date	The date for delivery of goods, or commencement or completion of the Works
Huxleys	Huxley (UK) Limited, incorporated and registered in England and Wales with company number 02829270, whose registered office is at 25 St Thomas Street, Winchester, Hampshire, United Kingdom, SO23 9DD
Order	An order to Huxleys to supply the goods and/or Works listed
Works	The installation and or consultancy services set out on the Order (if any)

2 GENERAL

- 2.1 These conditions are the terms and conditions on which Huxleys will supply the goods and/or Works listed on the Order to the exclusion of any other terms and conditions that the Customer may purport to apply to the contract. They may only be amended by agreement in writing between Huxleys and the Customer. If there is any conflict between these conditions and the provisions in the Acknowledgement or on the Order the following order of priority will apply: (i) the Acknowledgement (ii) the Order (iii) these conditions.
- 2.2 All of these conditions shall apply to the supply of both goods and Works except where application to one or the other is specified.
- 2.3 Any words following the terms *including, include, in particular, for example* or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.4 A reference to writing or written includes fax and email.

3 SCOPE OF WORK

- 3.1 The Works that Huxleys will do and/or the goods that they will supply are set out on the Order. Unless explicitly stated otherwise, where an Order includes Works, Huxleys are not engaged to carry out design or survey work but merely to supply and/or install a standard product in the place required by the Customer, or provide consultancy services, as the case may be.
- 3.2 Where Huxleys have agreed to provide consultancy services as part of the Works agreed in the Order, then unless stated the consultancy services shall be limited to the provision of a reasonable amount of time involving no more than three site visits and the provision of general advice as to the installation of Huxleys' products.
- 3.3 Unless stated the Works do not include the removal and/or disposal of spoil and packaging.
- 3.4 The Works do not include the bringing into service or maintenance of the good(s) installed which shall be the sole responsibility of the Customer. Huxleys will provide the Customer with instructions necessary to carry out such functions.
- 3.5 The Order shall only be deemed to be accepted when Huxleys issues a written Acknowledgement of the Order.
- 3.6 Huxleys reserves the right to make any changes in the specification of the goods and/or Works which are required to conform with any applicable statutory or regulatory requirements or which do not materially affect their quality or performance.
- 3.7 Any samples, drawings, descriptive matter or advertising issued by Huxleys and any descriptions or illustrations of the goods or of the Works contained in Huxleys' marketing materials are issued or published for the sole purpose of giving an approximate idea of the Works and/or goods described in them. They shall not form part of the Contract nor have any contractual force. Furthermore, the Customer acknowledges that the same products ordered separately may differ in certain small ways (for example, the precise shade of green of golf mats may not match exactly in all cases).
- 3.8 The Customer shall:
- 3.8.1 ensure that the terms of the Order and any other information it provides to Huxleys are complete and accurate;
 - 3.8.2 if the Order includes Works, prepare the Customer's premises for the delivery of the goods and/or supply of the Works;
 - 3.8.3 if the Order includes Works, provide Huxleys, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Huxleys to provide the Works; and
 - 3.8.4 co-operate with Huxleys in all matters relating to the Contract and the supply of the goods and/or Works, including providing Huxleys with such information and materials as Huxleys may reasonably require in order to supply the goods and/or Works, and ensuring that such information is complete and accurate in all material respects.

3.9 Subject to the provisions of clause 4, no Order in respect of which an Acknowledgement has been issued by Huxleys may be cancelled by the Customer except with the written agreement of Huxleys and on terms that the Customer shall compensate Huxleys in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Huxleys in the performance of the Contract or as a result of cancellation.

4 PRICE AND PAYMENT

4.1 Where no price has been quoted in the Order, the price of the goods shall be the price quoted in Huxleys' published price list current at the date of the Acknowledgement of the Order.

4.2 Unless credit terms have been agreed the total price including VAT (if applicable) is payable upon placing of the Order.

4.3 Estimated Dates are not binding on Huxleys and should not be construed as a commitment by Huxleys in any way.

4.4 Unless stated otherwise any quotation given by Huxleys shall not constitute an offer, and is only valid for a period of 28 days, unless withdrawn earlier by notice in writing.

4.5 Prices are exclusive of VAT unless specifically stated otherwise.

4.6 Huxleys may suspend work or deliveries if the Customer fails to pay on time or if in its opinion the Customer will not be able to meet or is unlikely to be able to meet any existing or future commitments to Huxleys.

4.7 Without limiting Huxleys' other remedies, Huxleys reserves the right to charge interest on any overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 4.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

5 TIME FOR COMPLETION

5.1 The Estimated Date is approximate only and the time of delivery is not of the essence. Huxleys shall not be liable for any delay in meeting such date that is caused by a Force Majeure Event or the Customer's failure to provide Huxleys with adequate delivery instructions or any other instructions that are relevant to the supply of the goods and/or Works listed in the Order.

5.2 Where the Customer has elected for the goods to be delivered to them, the Customer shall ensure that they are at the delivery address specified on the Order on the Estimated Date or another date specified in advance by Huxleys. If Huxleys or Huxleys' carrier is unable to deliver the goods on the Estimated Date because the Customer is absent from such delivery address, Huxleys shall be entitled to charge the Customer a re-delivery charge.

5.3 If (otherwise than as a result of Huxleys' default) delivery of goods or completion of the Works is delayed beyond three months following the later of the Order date or the Estimated Date Huxleys may increase the price of the goods and/or the Works to take account of increases in labour and materials costs.

5.4 If (otherwise than as a result of the Customer's default) delivery of goods or commencement of the Works is delayed beyond 3 months following the Estimated Date the Customer may serve notice on Huxleys making time of the essence and setting a date for delivery or commencement not less than 21 days thereafter and if that notice is not complied with may cancel the Contract paying only for goods delivered and work carried out to the date of cancellation.

6 SITE ACCESS AND RESPONSIBILITY FOR INSTALLED WORKS

6.1 The Customer shall ensure that Huxleys has adequate safe access for the purpose of the Works and will supply power and water as required.

6.2 The Customer shall not by means of notices or otherwise restrict or purport to restrict or limit any duty or liability of the Customer its servants and agents to Huxleys its employees agents or subcontractors and shall indemnify Huxleys against all costs claims or expenses arising from the death of or injury to such persons or damage to their or Huxleys' property (unless caused by Huxleys or its servants or agents) whilst engaged on Huxleys business on the premises of the Customer or at the request of the Customer on other premises. The Customer is responsible for security of the site and dry storage of goods delivered by Huxleys but not for Huxleys' tools and plant.

6.3 The Customer is responsible for protection of its property surrounding the site and in particular advising Huxleys of all pipes, wires, cables and other underground hazards and for protecting the ground from damage caused by Huxleys' vehicles and plant.

6.4 Huxleys shall not be liable for any damage arising either during or after completion of the Works as a result of non-notification by the Customer of underground hazards under clause 6.3.

6.5 The Customer shall be responsible for ensuring that any necessary consents required in connection with the Works have been obtained.

6.6 Unless otherwise agreed the goods for the Works will be delivered by flatbed lorry or tipper truck as appropriate for offloading at the nearest place to the site of the Works accessible by vehicle. In the case of flatbed lorries, it is the Customer's responsibility to provide labour and/or machinery necessary to effect unloading. In these circumstances it is the Customer's responsibility to transport offloaded goods from the site of off-loading to the site of the Works.

6.7 Huxleys will not be liable for reasonable damage to land or property which is a natural consequence of the performance of the Works for the Customer.

7 OWNERSHIP OF GOODS

7.1 Goods delivered to the Customer shall remain the property of Huxleys until Huxleys receives payment in full (in cash or cleared funds) but risk in the goods shall only pass to the Customer on completion of delivery.

8 VARIATIONS OF WORKS

- 8.1 If in the course of any Works it becomes apparent that unforeseen factors require a variation to the Works or the use of additional materials or labour or if the Customer shall require additional work to be undertaken Huxleys shall inform the Customer in writing of the estimated cost of that variation or increase or addition and seek written approval prior to proceeding.
- 8.2 If no such approval is forthcoming or no agreement reached over the cost of the variation to the Works Huxleys may terminate the Contract and will be entitled to payment for goods and labour supplied to the date of such termination.
- 8.3 Sizes quoted are approximate only and represent the area of the material supplied prior to trimming and shaping. The actual playing surface will be smaller.

9 LIMITATION OF LIABILITY (THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE)

- 9.1 The restrictions on liability in this Clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 9.2.1 death or personal injury caused by negligence;
 - 9.2.2 fraud or fraudulent misrepresentation;
 - 9.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - 9.2.4 defective products under the Consumer Protection Act 1987.
- 9.3 Subject to Clause 9.2 above, Huxley's total liability to the Customer shall not exceed £5,000,000 (five million pounds sterling). Huxleys has obtained insurance cover in respect of its legal liability up to this amount.
- 9.4 Subject as above Huxleys' liability under the Contract or under any term, condition or warranty expressed or implied herein by virtue of the common law or statute or otherwise or in tort, in respect of loss or damage arising in consequence or by virtue of defective workmanship or materials shall be limited (insofar as such limitation is lawful and subject to the Guarantee below), to the cost of making good defects in workmanship or materials which become apparent within twelve months of completion of the Works or the delivery of the goods (whichever applies) and where the defect is notified to Huxleys in writing within 28 days of becoming apparent.
- 9.5 Huxleys shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) even if foreseeable or if advised of the possibility of the Customer incurring such losses which may arise out of or in connection with the Contract.

10 GUARANTEE

10.1 Where it has effected an installation Huxleys guarantees its materials and workmanship for twelve months following the date of completion of the Works and will remedy without charge any defect in the installation unless caused by misuse, accident, Force Majeure Events or failure to properly maintain. Where Huxleys has only supplied goods but not Works Huxleys warrants that (subject to the other provision of these conditions) the materials will be of a satisfactory quality and be fit for incorporation in an artificial putting green or any other specified purpose for the period of twelve months from the date of purchase.

11 SUPPLY OF GOODS ONLY

11.1 Where goods only are to be supplied, the following additional terms will apply:

11.2 Where no price has been quoted, the Customer agrees that price of the goods payable shall be the price quoted in Huxleys' published price list current at the date of acceptance of the Order.

11.3 Except as otherwise stated under the terms of any Order or in any price list of Huxleys, and unless otherwise agreed in writing between the Customer and Huxleys, all prices for goods are given by Huxleys on an ex works basis, and where Huxleys agrees to deliver the goods otherwise than at Huxleys' premises, the Customer shall be liable to pay Huxleys' charges for transport and insurance. Where delivery is to take place otherwise than at Huxley's premises, Huxleys shall have the exclusive right to select and arrange for a carrier to deliver the goods.

12 FORCE MAJEURE

12.1 Neither party shall be liable for a delay in performing or failure to perform any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).

12.2 Force Majeure Events may include, without limitation, acts of God, pandemic or epidemic, default of subcontractors or third party suppliers, shortage of supply, riots, civil commotion, strikes, lock-outs, stoppages or restraint or withdrawal of labour for whatever cause whether partial or general or any other reason beyond its control. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

13 ARBITRATION

13.1 If any dispute shall arise between the parties as to the quality of the Works or as to the quantity or pricing of goods or labour supplied and that dispute is not resolved within 28 days then either party may refer the matter under dispute to the decision of an expert appointed by agreement between the parties or at the option of either party by the President for the time being of the Royal Institution of Chartered Surveyors. The decision of such expert shall be final and his fees shall be borne as decided by him or her.

14 MISCELLANEOUS

14.1 Huxleys will not arrange insurance of the Works.

14.2 Huxleys may sub-contract the Works without the prior consent of the Customer.

- 14.3 The Customer may not exercise rights of abatement or set-off to avoid paying the price when due.
- 14.4 Huxleys' certificate that the Works are complete shall be deemed conclusive evidence of the satisfactory completion of the Works.
- 14.5 Huxleys may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Huxleys.
- 14.6 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, and that shall not affect the validity and enforceability of the rest of the Contract.
- 14.7 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 14.8 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.9 Any indulgence granted by Huxleys to the Customer or any waiver by Huxleys of its rights under the Contract shall not be deemed an agreement not to enforce those rights again.
- 14.10 Any notice required or permitted to be given by either party to the other under the Contract shall be in writing and may be given by hand or sent (by first class pre-paid post, acknowledged facsimile transmission or comparable means of communication, or by email (in the case of Huxleys, to sales@huxleygolf.co.uk to that other party at its registered address or principal place of business. Communication sent by pre-paid first class post shall be deemed to be delivered 3 days after posting. If delivered by hand on the day of delivery and if sent by acknowledged facsimile transmission on a working day prior to 4pm, at the time of transmission and otherwise on the next working day.
- 14.11 Save as provided in Clause 13 (Arbitration), the Contract 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, and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 14.12 The parties to this Contract do not intend that any term of this contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.