

MyHammer Terms & Conditions

1 Introduction

MyHammer is an internet platform for placing Jobs for trades and services by entering an Enquiry, obtaining Quotations and subsequent acceptance of a Quotation by the Customer. The platform is operated by MY-HAMMER Aktiengesellschaft (a public limited company registered in Germany with company registration number Berlin HRB 118291 whose registered office is at Mauerstraße 79, 10117 Berlin, Germany (hereinafter referred to as **MY-HAMMER AG**, “**we**” or “**us**”). Its use is governed by the following Terms and Conditions (hereinafter referred to as: “**Conditions**”).

2 Definitions

The words and expressions below are used throughout the Conditions and where they are used they will have the meanings set out below.

- MyHammer:** the internet platform operated by us for use in the United Kingdom (regardless of the domain logged on to in each case) which can currently be found at www.MyHammer.co.uk.
- Quotation Procedure:** each process for placing a Job conducted via MyHammer. A Quotation Procedure begins with the Customer posting an Enquiry and ends either when the Customer places a Job with a Contractor or when the Customer decides not to place a Job by refusing all Quotations received (if any) or by the Enquiry being withdrawn or blocked;
- Enquiry:** the whole of the information entered by the Customer about a Job to be placed by means of the Quotation Procedure, in particular the description of the Job content and the Customer’s forum entries adding to or amending this description, and further criteria and requirements concerning performance of the Job;
- Job:** the whole of the trade service or other services for which a Quotation is requested by means of an Enquiry on MyHammer, including where applicable any supplementary supplies or services such as the delivery of materials to be provided by the Contractor and used to carry out the Job;
- Quotation:** the amount required by a Bidder and posted on MyHammer as the price for carrying out a Job, including any additional information entered by the Bidder using the functions provided for this on MyHammer;
- User:** a person who logs on to or arranges for someone to log on to MyHammer or any part or parts of it (e.g. individual files or functions), whether registered as a Member or not;
- Member:** a User who has registered with MyHammer by setting up a membership account and by entering into a Membership Agreement;
- Customer:** a Member who posts an Enquiry on MyHammer;
- Bidder:** a Member who has submitted one or more Quotations in response to an Enquiry placed on MyHammer;

Contractor: the Bidder whose Quotation has been accepted by the Customer;

Fees for Use: the fees we charge for using MyHammer.

3 Scope of these Conditions

3.1 These Conditions apply to the use of the MyHammer English language website for use in the United Kingdom. On registration with MyHammer a Membership Agreement is entered into between the User and us, the content of which is in accordance with these Conditions. The details of the Membership Agreement are as set out in clause 5. As part of the registration process the User must expressly agree to these Conditions. **On agreeing to the Conditions by activating the entry field and the “Register now” button provided for this purpose, the User who is registering agrees that these Conditions constitute a binding part of the Membership Agreement.** The version of the Conditions current at any particular time can be accessed via a link at the bottom of each page of MyHammer.

3.2 The Conditions are only directly binding between the Member and us. **Save where expressly stated otherwise in these Conditions and only to the extent so stated no provision of these Conditions shall be enforceable under The Contracts (Rights of Third Parties) Act 1999 and these Conditions do not give rise to any legal contracts, claims or other benefits or protection between Members or in favour of third parties or with a protective effect for third parties.** This applies also insofar as these Conditions contain provisions relevant to the relationship between the relevant Members (e.g. concerning the entry into or contents of a contract between a Customer and a Contractor).

3.3 Supplementary conditions apply to certain features, services or areas of MyHammer (e.g. where applicable escrow services, partner programme, “Customers attract Customers” programme, “Certified Member”, and making payments by using external payment systems). **These Conditions expressly incorporate such supplementary conditions.** The Member is referred to such supplementary conditions before carrying out the specific feature or utilising the specific service for the first time. **The Member expressly agrees to the supplementary conditions in each case and recognises that these are also binding upon him and that use of such features, services or areas will amount to acceptance of the relevant supplementary conditions.** The supplementary conditions shall also apply to any future use of the same feature, service or area.

4 General provisions for using MyHammer

4.1 When using MyHammer the User must observe and comply with the law in force and the provisions contained in these Conditions. This applies in particular to the content of the items posted by Members on MyHammer, e.g. Enquiries or ratings.

4.2 **We expressly draw to the attention of Users that they should not use MyHammer for illegal activities. It is prohibited to submit Enquiries to be carried out in breach of the law such as by cash in hand or other method of remuneration for the purpose of not paying relevant taxes or statutory payments. This also applies to negotiations or any activities in preparation for illegal activities for such purposes, such as cancelling Enquiries or not placing Jobs.**

4.3 We also expressly refer to the fact that both the provision of and remuneration for services in certain sectors may be governed by statutory or other regulations and cannot therefore be freely negotiated. It is the responsibility of Members, particularly of the Bidders, to check for any such restrictions and ensure that they comply with them including where relevant drawing such restrictions to the attention of the other party.

4.4 It shall be prohibited to transfer any information to personally contact other Members (hereinafter: "Contact Data"), unless the features expressly provided by MyHammer for this purpose are used for contacting. In particular, it shall be not admissible to publish Contact Data during the Quotation Procedure, in the Member's profile, in Quotation comments or other content posted by a Member, including image files or other files, by avoiding such Contact Features. Clause 16.2 shall apply to any breach of this provision.

5 Purpose, transfer and termination of the Membership Agreement

5.1 The purpose of the Membership Agreement is solely to allow access to MyHammer on the basis of these Conditions, the schedule of fees and where appropriate the relevant supplementary conditions (see clause 3.3). The Membership Agreement does not include any services of an intermediary or broker.

5.2 Access to view public areas of the MyHammer website (in accordance with these Conditions) is open to any User. The use of further functions or services (e.g. posting Enquiries and the participation in Quotation Procedures), requires prior registration as a Member.

5.3 We provide MyHammer in the form and with the functions and services in each case on an "as is" and "as available" basis on the website. We cannot and do not guarantee that the services on MyHammer will meet a User's requirements or that access to MyHammer will be uninterrupted or error-free. A User is not entitled to the provision or continuation of any specific functions or services and nor does a Membership Agreement entitle a Member to access to, or to the continued availability of, any specific functions or services. We are entitled to change the content of the available functions and services, to suspend them temporarily or permanently, to introduce new functions and to make any functions subject to specified conditions.

5.4 We provide MyHammer in the form and with the functions and services in each case on an "as is" and "as available" basis on the website. We cannot and do not guarantee that the services on MyHammer will meet a User's requirements or that access to MyHammer will be uninterrupted or error-free. A User is not entitled to the provision or continuation of any specific functions or services and nor does a Membership Agreement entitle a Member to access to, or to the continued availability of, any specific functions or services. We are entitled to change the content of the available functions and services, to suspend them temporarily or permanently, to introduce new functions and to make any functions subject to specified conditions.

5.4.1 We are not a broker or intermediary of any type.

5.4.2 We are not involved with, or in the performance of, the Jobs placed on the platform whether as a contracting party or a representative or agent of a contracting party or in any other way.

5.4.3 Notifications which the MyHammer system generates in connection with an Enquiry, a Quotation or a Quotation Procedure are provided only for the information of the Member concerned. Where these notifications contain statements with any legal significance, these are deemed to be given by the party concerned.

5.4.4 Where a contract for carrying out a Job is concluded by using MyHammer, only the Members entering into it (Customer and Contractor) are parties to the contract for that Job.

- 5.4.5** For all matters relating to a Job, (e.g. concerning agreements as to payment, timescales or warranty claims), the Member should in all cases contact the other contracting Member.
- 5.4.6** Jobs are carried out exclusively between the Customer and the Contractor.
- 5.4.7** We are not responsible for, nor obliged to receive or process, complaints against other Members nor to mediate in or resolve disputes between Members, unless the complaint concerns the performance of our legal or contractual obligations.
- 5.5** We are entitled to transfer our rights and obligations under the Membership Agreement entirely or partially to a third party by giving not less than four weeks' notice to the Member. If the Member does not agree to the transfer, the Member can terminate the Membership Agreement with immediate effect, e.g. by closing his Member's account.
- 5.6** Both we and the Member can terminate the Membership Agreement at any time by notice effective immediately. When a Member gives notice of termination, he agrees that Jobs posted but not yet placed at the time of termination and Quotations not yet accepted are void and no longer have any effect. We will delete any such Enquiries and Quotations on receipt of the notice of termination or immediately afterwards. Such actions shall not give rise to any liability on our part.

6 Registration / Secrecy of access data / Presentation of certificates

- 6.1** As stated in clause 5.2 above, to use any functions other than searching for Jobs (e.g. entering Enquiries or submitting Quotations) registration as a Member is required. The User has no right to registration or activation as a Member in order to use additional functions of MyHammer. **Clicking the "Register now" button and subsequent (1) activation of the Member account and (2) confirmation of registration by us forms a binding Membership Agreement with us, the contents of which are as set out in these Conditions.**
- 6.2** Only legal entities and natural persons aged 18 or over with full legal capacity may register. A legal entity can only be registered by a natural person who is authorised to do so and whose name must be given.
- 6.3** Any data posted on the MyHammer website, in particular the information requested during registration and for drawing up the Member's profile, must be given fully and truthfully. In case of subsequent changes, this data, in particular the address and other contact data, and in the case of Contractors the additional information in the Member's profile, must always be kept up-to-date via the Member's account.
- 6.4** The membership name selected by the Member must not infringe any valid right, offend common decency or harm the rights of third parties. In addition, it must not include the term "MyHammer" or any similar term, an e-mail or Internet address or other Contact Data such as phone numbers. The Member's name and password are to be kept secret, unless it is necessary to disclose them to use MyHammer e.g. when individual features or services of MyHammer are provided by third parties and it is necessary to log on to take advantage of these. When requested to communicate or enter the Member's name and password the Member must always check, to the extent that is possible and reasonable for him to do so, whether this request is from MyHammer or from an authorised third party in order to prevent the misuse of registration data and the Member's account.
- 6.5** It is not permitted to set up more than one Member's account for the same natural person or legal entity.
- 6.6** The Member may not assign the Membership Agreement. The Member's account is not transferable.

6.7 Members who wish to use MyHammer for commercial purposes shall within seven days of registration send a copy of their trade licence (confirmation of registration) to MY-HAMMER AG (for contact data refer to MyHammer start > About us > Company Details). The same applies to any other information posted by a Member on the MyHammer website regarding special qualifications, permissions, memberships and similar information which must be verified by sending the relevant documentation to us (e. g. diploma). If possible the documents are to be presented in one transmission. If this obligation is not fulfilled, we reserve the right not to grant the Member activation or to ban him.

6.8 Irrespective of the User's obligations specified in clause 6.3 (indication of correct data) and 6.7 (provision of documents), MY-HAMMER AG does not warrant that data posted by Members, such as information regarding identity, address, qualifications, references or solvency, are correct. Thus, it is the responsibility of each Member to check the relevant data of other Users itself, if necessary. MY-HAMMER AG will track any information on incorrect data. If need will be, we will ask the respective Member to correct such data, or we will block or delete such data accordingly.

7 General rules on conducting Quotation Procedures

7.1 Once a Job has been posted on MyHammer as an Enquiry it must not be offered in any other way whilst it is still open to Bidders. If the Customer wants to place the Job outside MyHammer, the Customer must withdraw the Enquiry **beforehand** by means of the feature available for this purpose. Refer to clause 11 of these Conditions for the details and consequences of withdrawing a Job.

7.2 Members may submit offers to carry out Jobs to a Customer only in the form of a Quotation relating to the Enquiry concerned on the MyHammer website. Clause 16.2 shall apply accordingly to any breach of this provision.

7.3 If the Customer receives offers in relation to an Enquiry posted by him in a form other than as a Quotation (see Clause 7.2), in particular outside MyHammer, the Customer must refuse the offer and ask the User making the offer concerned to submit the offer on MyHammer. In the case of a Customer placing a Job with persons or companies who have offered via MyHammer in whatever form to carry out the Job where the contact with such persons or companies was initiated via MyHammer, the Customer may place that Job only via MyHammer in accordance with clause. Clause 16.2 shall apply accordingly to any breach of this provision.

7.4 Once a Quotation for a Job posted on MyHammer has been accepted by the Customer in accordance with clause 12.1 , the contracting parties - Customer and Bidder - should make contact with each other after the validity period of the Enquiry ends. Failure to comply with this obligation can lead to suspension or blocking of the Member's account.

8 Posting Jobs and their content / Prohibited Enquiries

8.1 Posting a Job as an Enquiry constitutes a **non-binding request from the Customer for Members to submit Quotations** for the Job posted. A Job is only placed by a Bidder being selected to carry out the Job and his Quotation being accepted in accordance with the procedures set out in clause 12.1.

- 8.2** The Customer must describe the Job as accurately and fully as possible in the Job description when posting the Enquiry to give Bidders a reliable basis for calculation. All Quotations and other statements as to prices, e.g. the price stated by the Customer when posting the Enquiry, must relate to the complete Job in each case. Quotations must not be broken down into individual items, e.g. to a price per unit of time or a price per unit of area or unit of volume, unless the Bidder uses the features provided specifically for this purpose. Clause 16.2 shall apply accordingly to any breach of this provision.
- 8.3** It is prohibited to post Enquiries which infringe the law, the rights of third parties, the provisions of the Membership Agreement or common decency. This applies in particular to Enquiries:
- which contravene or are designed to allow contravention of any legal requirements relating to payments of taxes or other statutory payments,
 - for services which it is prohibited by law to offer, market or apply for (e.g. unauthorised gambling),
 - which may jeopardise the health or safety of persons or animals,
 - which infringe our copyright or other intellectual property rights or those of a third party
 - in which permissible services are linked together in an unauthorised manner, or
 - in which the remuneration is to be paid exclusively or partially in the form of e.g. commission depending on volume of sales.

We reserve the right to delete such Enquiries.

9 “Questions & Answers” area

- 9.1** A communication area is available for every Job entered as an Enquiry. The aim of this area is to facilitate communication between the Customer and Bidders or Members interested in submitting a bid for clarification of the details of the Job (hereinafter: “Questions & Answers” area).
- 9.2** Additional information to supplement the Job description is summarised in the “Questions & Answers” area. The Customer should answer questions promptly, fully and accurately provided that they relate to the content of the Job, and insofar as it is possible and reasonable for him to do so.
- 9.3** All postings in the “Questions & Answers” area must relate to the Job and be worded factually. Information to enable personal contact to be made, Quotations, indication of prices and advertising messages must not be posted in the “Questions & Answers” area. To do so, the features provided on MyHammer for such purposes shall be used.
- 9.4** Answers from the Customer to questions raised in the “Questions & Answers” area which clarify or supplement the Job description become part of the Job description. A Bidder remains bound by his Quotation with regard to the modified the Job description unless and until the Quotation is withdrawn. The Bidder may, after withdrawing a previous Quotation, submit a new Quotation taking into account the new Job description.
- 9.5** Enquiries and Quotations cannot be validly withdrawn by a message in the “Questions & Answers” area. To do so, the features provided on MyHammer for such purposes shall be used. Enquiries and Quotations can only be withdrawn in accordance with clause 11 with the consequences indicated therein.

10 General rules on submitting Quotations

- 10.1** Quotations for carrying out a Job posted as an Enquiry on MyHammer must only be submitted via MyHammer using the features provided for this purpose and before the expiry of the Enquiry deadline (refer to clause 7.2).
- 10.2** Each Quotation must indicate the sum which the Bidder actually intends to invoice to the Customer for carrying out the Job. Quotations must always be stated as gross sums including the applicable value added tax. This also applies even if the Customer is authorised to deduct input tax. The indication of net prices is only permitted if the Customer expressly requests or permits this. Bidders are responsible for determining any matters relevant to their calculation before submitting the Quotation, and if appropriate should - in their own interest – arrange a site meeting with the Customer to view the conditions for performance of the Job.
- 10.3** Submitting bogus Quotations with the aim of reducing or avoiding Fees for Use is prohibited. This includes splitting up Jobs with a fixed overall volume into smaller units (see clause 8.2), unless features specifically provided on MyHammer for this purpose are used. We point out that fraudulent breach of this provision can be a punishable offence. We reserve the right to take such action as we reasonably consider appropriate in the event of any such activity including without limitation immediate suspension or termination of the Membership Agreement of the Members involved and, in the case of the Bidder, by applying the compensation provisions of clause 7.2 . Clause 16.2 shall apply accordingly to any breach of this provision.
- 10.4** The Bidder remains bound by a Quotation entered on MyHammer and not withdrawn in accordance with clause 11 for a period up to four weeks beyond the end of the validity period of the Enquiry. By submitting a Quotation the Bidder undertakes to carry out the Job even if the Customer only gives him the Job during the Examination Period in accordance with clause 12 or during the period of two weeks after it has ended (provision with protective effect for third parties in accordance with clause 3.2).

11 Withdrawal of Enquiries and Quotations

- 11.1** Enquiries and Quotations can be withdrawn before the final placing of a Job using the features provided for this as long as the validity period of the Enquiry has not yet ended.
- 11.2** Enquiries and Quotations which have been withdrawn are listed in the Member's profile. On withdrawal the respective Enquiry or Quotation is treated as not having been posted. This applies to Enquiries which have been withdrawn even if one or more Quotations have already been submitted in response to the Enquiry. Every Member declares on acceptance of these Conditions at the time of registration and entry into the Membership Agreement that for this purpose with regard to the specific postings (Enquiry and Quotation) it grants the other Members participating in an Enquiry in each case a corresponding right of withdrawal. At the same time each Member waives all claims for compensation for expenditure or damages which may exist regardless of the party against whom they are directed (provisions with protective effect for third parties in accordance with clause 3.2).

12 Placing Jobs / Examination Period / Refraining from placing a Job

- 12.1** A Job is placed via MyHammer by the Customer accepting a Quotation submitted in response to his Enquiry. A Quotation can be accepted in one of the two following ways:
- 12.1.1 Active placing of a Job** (before or after the end of the validity period of the Enquiry): To place a Job actively the Customer expressly accepts one of the Quotations submitted for his Enquiry by using the functions provided for this purpose in the MyHammer system. **By this action the Customer expressly accepts the Quotation and confirms his intention to be unconditionally bound by it.** Active placing can occur either before the end of the validity period of the Enquiry (hereinafter known as “**Immediate Awarding**”) or after it has expired during the Examination Period in accordance with clause 12.3.
- 12.1.2 Automatic placing of a Job** (after the end of the validity period of the Enquiry and on expiry of the Examination Period): With automatic placing of a Job the Customer accepts the Quotation pre-selected by the MyHammer system without express separate confirmation, by allowing the Examination Period according to clause to expire thus leading to placing of the Job by the MyHammer system. After expiry of the validity period of the Enquiry, the Customer will be automatically informed which Bidder has been nominated and point out that after expiry of the Examination Period (clause 12.3) the Job will be automatically placed with this Bidder. If automatic placing is activated, it can still be deactivated by the Customer during the Examination Period of a particular Job and thus prevent the acceptance of the nominated Quotation. The Customer can deactivate automatic placing either by withdrawing the pre-selection using the relevant feature in the MyHammer system or by accepting the Quotation of another Bidder by actively placing a Job. If the Customer has not made use of this option, he thereby declares the binding unconditional acceptance of the Quotation from the Bidder selected by the MyHammer system on expiry of the Examination Period in accordance with this clause. MY-HAMMER AG shall be entitled to deactivate automatic placing for certain Quotations or as a whole. In this case, the provisions for automatic placing above will not apply.
- 12.2** If the Customer does not accept any Quotation by way of Immediate Awarding before the validity period of the Enquiry expires, after the validity period of the Enquiry expires, MyHammer will – unless automatic placing according to clause 12.1.2 has been deactivated – pre-select a Quotation first and inform the Bidder who has placed it. **This notification is only for information and does not constitute acceptance of the Quotation by or for the Customer.**
- 12.3** From the end of the validity period of the Enquiry there is a period of fourteen days (“**Examination Period**”) to enable the Customer to examine the Quotations received in response to his Enquiry. The Customer is entitled to examine the Quotations during the Examination Period and is advised to do so. If the Customer considers that a Quotation is suitable, he can place the Job via MyHammer during the Examination Period by way of active placing in accordance with clause 12.1.1 or automatic placing in accordance with clause 12.1.2 . If the Customer does not want to accept any of the Quotations he can refrain from placing a Job by not actively placing it and deactivating the automatic placing – if activated. The Examination Period is ended by active placing of a Job during the Examination Period.
- 12.4** The conclusion of a contract and fulfilment of the contract in the case of Jobs placed via MyHammer take place according to general contract law. Thus, any features for placing a Job shall be used in accordance with contractual provisions only. The cancellation or termination of a contract concluded between the Customer and the Contractor, too, is only possible when the relevant legal requirements are fulfilled. Insofar as MyHammer provides features for declaring cancellation, effecting a withdrawal, a termination or other rights to alter a legal relationship, after the Examination Period has expired, these do not grant any rights extending beyond the statutory and other legal rights relating to the relationship between the Customer and the Contractor (see clause 5.4 concerning our role and the role of the parties to a contract for a Job).

13 Rating system

- 13.1** Members have the opportunity to rate other Members participating in a Quotation procedure using the MyHammer rating system. The performance of a Job placed via MyHammer shall be only rated by the Members involved. Any other aspects such as the quality of communication with another Member may be also rated by other Members. The performance of a Job shall not be rated until the respective service has been completely performed. If the performance of a Job fails by fault of a Member involved, it is permissible to give a negative rating. The aim of the rating system is to build up a meaningful profile of the performance, reliability and trustworthiness of Members.
- 13.2** To achieve the aim mentioned above, each Member must give only objective and truthful comments when rating other Members. There should not be any statements made contrary to the objective of the rating system, in particular there should be no unnecessary, irrelevant or insulting statements. Any such statements may result in complete or partial deletion of the rating, suspension of the Member, termination of the Membership Agreement and/or other appropriate measures.

14 Fees for Use / Terms of Payment

- 14.1** We charge Fees for Use according to the schedule of fees available on MyHammer. The Member who uses chargeable features on MyHammer is required to pay these Fees for Use. In particular, it is at the Bidder's expense to place a Quotation in case such Quotation is finally accepted by the Customer. The schedule of fees may include additional regulations.
- 14.2** The Fees for Use are the consideration for using chargeable features of MyHammer. We do not make any warranties regarding the fitness of the services performed using the respective feature for a certain purpose, irrespective of whether the suitability has not existed from the beginning or has ceased to exist after the service has been already performed. The risk of use shall be borne by the User. In particular, any Fees for Use incurred by the placement of a successful Quotation are not dependent on the actual performance of the Job. This obligation to pay Fees for Use therefore still applies if a Job is placed via MyHammer, but subsequently it is not carried out and/or a contract concluded between the Members concerning the performance of a Job is later terminated. We may waive our right to receive Fees for Use, as a gesture of goodwill. The grant of any such waiver is entirely within our absolute discretion and if so granted is always without accepting any legal obligation to do so.
- 14.3** As far as the Fees for Use are determined on the basis of amounts stated in the Quotation Procedure (price stated by the Customer in the Enquiry, price quoted and price on placing the Job) they are calculated according to the figures stored in the MyHammer system. This amount serves only as a basis for assessment. It is therefore irrelevant whether the amount is gross or in exceptional cases a net amount (see clause 10.2).
- 14.4** The Fees for Use become due immediately and must be paid within seven days after receipt of the services performed using the methods of payment already offered by Us. We shall be entitled to give any additional instructions concerning payment, e. g. to indicate a date of payment in an invoice. Our rights relating to interest on late payments and right to recover shall not be affected.
- 14.5** Any additional costs which we may incur in respect of the recovery of Fees for Use (e.g. bank charges incurred through the Member or expenditure caused by default) are to be borne by the Member concerned in addition to the sum payable for Fees for Use. For each appropriate demand we charge a fee of £ 5.00, and in the case of the cancellation of a money transfer the Member must reimburse to us the cancellation fees charged by the bank.

14.6 Members undertake not to take any action to avoid the obligation to pay Fees for Use. In the event of breach of this provision, Clause 16.2 shall apply accordingly

15 Responsibility for content / Our liability

15.1 The content of Enquiries posted on MyHammer, entries in the “Questions & Answers” area, Quotation or rating comments and Member profiles is drawn up exclusively by the Member concerned. Thus, we will consider such content as external content. The Member who posts the content in question is exclusively responsible for it. If we are notified of or otherwise become aware of content which might be illegal, defamatory or unauthorised we shall immediately examine the content concerned and if the content is found to be illegal, defamatory or unauthorised we shall be entitled to delete it or block access to it.

15.2 We provide MyHammer in the form and with the features which are from time to time available. We have no obligations to provide or to maintain any specific features (see clause 5.3). No guarantee is given with regard to the availability of the system. The system will at times be entirely or partially restricted for routine or emergency maintenance work or for other reasons, e.g. with regard to individual features (hereafter referred to as “**Restricted Availability**”). Liability for the consequences of Restricted Availability of whatever kind and for whatever reason is excluded. We shall not incur any **liability for any consequences** of Restricted Availability on the performance of Quotation Procedures, for instance because an Enquiry cannot be posted or a Quotation cannot be submitted, or an Enquiry expires in a period of Restricted Availability.

15.3 We warrant to the User that MyHammer will be provided using reasonable care and skill and, unless we are prevented by circumstances beyond our reasonable control, in accordance with these Conditions. For the avoidance of doubt the user is also referred to clause 5.4 concerning the extent of our role and the role of the parties to a contract for a Job).

15.4 We shall have no liability to the User for any loss, damage, costs, expenses or other claims for compensation arising from any information or instructions supplied by the User which is or are incomplete, incorrect or inaccurate.

15.5 We shall not be liable to the User by reason of any delay in performing, or any failure to perform, any of our obligations in relation to MyHammer or any of its features, if the delay or failure was due to an act of God, war, terrorism, failure of power or internet service provision, or any other cause beyond our reasonable control.

15.6 We shall not be liable to the User for any unforeseeable loss or damages arising from the provision (or non-provision) of MyHammer or any of its features, including loss of profit or consequential loss or damage

15.7 To enable us to deal with any complaint that may arise relating to MyHammer or any of its features, the User must provide full details of any complaint within fourteen days of the supply of the relevant services by us.

15.8 Nothing in these Conditions affects any liability for death or personal injury caused by our negligence or for fraudulent misrepresentation, or the User’s statutory rights as a consumer.

15.9 **The remaining provisions of this Clause 15 apply if you are not a consumer i.e. they apply if you are acting in the course of your trade, business or profession, but not if you are an individual not acting in the course of your trade, business or profession**

- 15.10** The following provisions of this clause¹⁵ set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to the User who is not a consumer (i.e. to a User who is acting in the course of his trade, business or profession) in respect of:
- 15.10.1** any breach of these Conditions or the Membership Agreement;
 - 15.10.2** any use made by the User of MyHammer, its functions or any part of them; and
 - 15.10.3** any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions or the Membership Agreement.
- 15.11** All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions or the Membership Agreement.
- 15.12** Nothing in these Conditions limits or excludes our liability for:
- 15.12.1** death or personal injury resulting from negligence; or
 - 15.12.2** any damage or liability incurred by the User as a result of fraud or fraudulent misrepresentation by us.
- 15.13** Subject to Clauses 15.11 and 15.12 we shall not be liable for:
- 15.13.1** loss of profits; or
 - 15.13.2** loss of business; or
 - 15.13.3** depletion of goodwill and/or similar losses; or
 - 15.13.4** loss of anticipated savings; or
 - 15.13.5** loss of goods; or
 - 15.13.6** loss of contract; or
 - 15.13.7** loss of corruption of data or information; or
 - 15.13.8** any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 15.14** Subject to Clauses 15.11 and 15.12 our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of these Conditions or the Membership Agreement shall be limited to the amount paid to us by the User by way of Fees for Use in respect of the use of the MyHammer service or functions, which gave rise to the liability or £ 500 whichever is the greater.

16 Breaches/ Sanctions / Exemptions

16.1 MY-HAMMER AG reserves the right in the event of breaches of these Conditions to impose the following sanctions.

16.2 In the event of breaches of

- Clause 4.4 (prohibited transmission or publication of Contact Data)
- Clause 7.2 (submitting of Quotations outside MyHammer)
- Clause 7.3 (no refusing of Quotations submitted contrary to clause 7.2)
- Clause 8.2 , 10.3 (prohibition of submitting bogus Quotations)
- Clause 14.6 (prohibition of avoiding Fees for Use), or
- Clause 16.6 (prohibition of renewal of registration after banning)

the Member concerned – if several Members are involved, as joint debtors – shall be bound to pay damages as a lump sum to us to compensate the expenses incurred by the prosecution of such breach, unless it was not the Member's fault. The calculation of damages is subject to clause 16.3 and 16.4. we reserve the right to enforce any further claims for damages. It shall be the Member's responsibility to provide evidence of a lower damage.

16.3 Insofar as it concerns a breach of the provisions under clause 16.2 in connection with a certain Enquiry, the damage amounts to the threefold of the Fees for Use which would have incurred if the Job had been placed via MyHammer. In principle, the calculation of the Fees for Use is based on the Customer's price expectation or the highest quotation for the Enquiry, depending on which amount is higher. If there is neither any price expectation nor quotation or if those fall below the usual remuneration for the performance of a Job ("Order Value") by more than a half, we shall be entitled to fix the amount of damages on the basis of an Order Value to be estimated at our own discretion. The Member shall have the right to have our assessment verified by the competent court.

16.4 Insofar as it concerns a breach of the provisions under clause 16.2 independent of a certain Enquiry, e. g. caused by contents published in a Member's profile, damages to be paid as a lump sum shall amount to £ 250.00. In case of continuing breaches, this amount shall be increased by £ 50.00 for each calendar day.

16.5 We reserve the right in the case of breaches of these Conditions, depending on the nature of the breach, without prior notice and without stating any reasons to block or delete Enquiries, Quotations and ratings posted in breach of these Conditions, or other content, to exclude Members acting in breach of these Conditions or in breach of the Membership Agreement temporarily or permanently, („banning“) or at our reasonable discretion to take such measures as are suitable to prevent such breaches or bring them to an end. In so doing we shall reasonably take into consideration the interests of the Members concerned. A breach occurs in cases including the following:

- the Member knowingly supplies false information;
- Jobs are posted when it can be established in advance or is obvious that they cannot be carried out at the highest price indicated, or for which the price is substantially out of proportion with the content of the Enquiry;
- Jobs posted on MyHammer should be placed in a different way from that envisaged on MyHammer;
- the processing of Enquiries is disrupted for example by bogus Quotations;
- entries placed in the "Questions & Answers" area or in the rating system or made in some other form which are defamatory, designed to undermine or devalue the system or otherwise lack objectivity;
- the Member does not pay fees charged, or does not pay them in full or when due for payment, or if
- the Member makes modifications or takes other actions likely to cause damage to us or to MyHammer in any way.

- 16.6** Members who have been banned will be denied further use of and renewal of registration on MyHammer.
- 16.7** The User indemnifies us against and releases us from all claims, costs and losses, to which we are exposed in connection with culpable infringement by the User against his obligations under these Conditions, in particular when claims are made by third parties on account of infringement of their rights, e.g. intellectual property rights or personal rights including costs incurred by processing and legal defence (e.g. internal processing expenses, lawyer's fees and court costs).

17 Privacy Policy

- 17.1** It is necessary to store and process personal data of the Members in order to enable the Quotation Procedures to be carried out, and in particular to facilitate the communication requirements according to these Conditions. We guarantee confidential treatment of this data as required by the relevant data protection legislation and regulations and in accordance with the Privacy policy which is incorporated into these Conditions.
- 17.2** We are particularly processing names, addresses and e-mail addresses of Members. We only collect further personal data insofar as this is required for the drawing up, content or modification of the Membership Agreement, for making MyHammer available or for charging for use of MyHammer (where applicable) and as allowed or permitted by statute and regulations, or if the Member has given its consent for the content specified in the Privacy Policy or has given its consent in any other way. In order to submit Quotations in response to Enquiries posted it is necessary for a Member to draw up a Member's profile. The data stored can be viewed via the Member's account.
- 17.3** On receipt of the Member's request his personal data will be deleted save to the extent it is required to carry out Quotation Procedures including the Fees for Use to be paid to us. The Member must recognise that on deletion of his personal data his ability to use MyHammer may be restricted or impossible.

18 Communication

- 18.1** All notices relating to these Conditions are to be given in writing or electronic text form (e-mail) and sent or delivered as follows:
- 18.1.1** If to us: The contact information for us current at any particular time can be found under Company Details.
- 18.1.2** If to the Member: The data entered in the Member's account is considered as the Member's contact data.

Notices sent by us or by a Member using this contact data by e-mail are deemed to have been delivered at the time of sending, notices delivered in person are deemed to have been served on delivery and notices despatched by post are deemed to have been delivered two working days after posting provided they are sent by prepaid airmail post and properly addressed in accordance with this clause 18.1, unless we or the Member to whom the notice was addressed provides evidence of a later time of arrival.

- 18.2** Insofar as communications between us and a Member or between Members are sent by e-mail and are therefore in electronic text form, the Member recognises the binding effectiveness of statements of intent transmitted by this means.
- 18.3** The e-mail must include the name and e-mail address of the sender and the date and time it was sent and, in the case of e-mails sent by a corporate entity, the additional details required in relation to such entities.

- 18.4** We point out that confidentiality is not guaranteed for data, information, etc. communicated on the internet. On request the communication with us can be carried out using a recognised encryption method.
- 18.5** An e-mail received in accordance with the above provisions will be considered as validly coming from the owner of the sender's address subject to evidence to the contrary.
- 18.6** Any communication in relation to these Conditions and/or the Membership Agreement may be by e-mail safe where expressly stated otherwise.

19 Information for consumers on cancellation

19.1 Right to cancellation

You have the right to cancel the Membership Agreement at any time up to the end of fourteen days after the day on which the Membership Agreement is concluded as set out in this clause 19. This period of time begins on receipt of this information in written form, but not before the Membership Agreement is entered into nor before we fulfil our obligations to supply information in accordance with The Consumer Protection (Distance Selling) Regulations 2000. To cancel during the cancellation period you should notify us in written form (e.g. by letter, fax or e-mail). You do not have to give any reasons.

The cancellation can be sent to us as follows:

MY-HAMMER Aktiengesellschaft, Mauerstraße 79, D-10117 Berlin, Germany.

E-Mail: service@MyHammer.co.uk

19.2 Consequences of cancellation

Once you have notified us that you are cancelling the Membership Agreement, we will within 30 days refund or re-credit to you any sum that has been paid by you or debited from your credit card under the Membership Agreement for services we have provided and you will return to us anything we have supplied to you. Please note that this does not apply in circumstances in which your right to cancel has expired under clause 19.3.

19.3 Special notes

Your right to cancel expires if we have started providing the service to you with your express consent before the end of the cancellation period or you yourself initiated this. Providing the service includes any use of MyHammer, e. g. posting an Enquiry, submitting a Quotation etc.

- End of the information on cancellation -

20 General provisions / Applicable law / Jurisdiction

20.1 For calculation, expiry and compliance with dates, periods of time or time limits, London time is applicable. The time indicated in the upper area of the MyHammer page may deviate from this time and is therefore not binding. It serves only as an approximate guide.

20.2 The version of these Conditions in force at the time of registration form part of the Membership Agreement between the Member and us. We are however authorised to modify the Conditions at any time with future effect in compliance with the following procedure:

21.2.1 Members shall be informed of such modifications by e-mail 21 calendar days before the proposed date when the modifications come into force.

- 21.2.2** A Member can object to the modifications in writing or in text form (e.g. by e-mail). The Member has a period of 21 days from receipt of our notice to notify us of his objection. If no objection is received and the Member continues to use MyHammer after expiry of the period for objection, or if the Member agrees to the modifications, the modified provisions as effectively agreed apply to all services to be provided after expiry of the period of time.
- 21.2.3** The posting of an Enquiry, a contribution to a forum or a rating comment, or the presentation of a Quotation by the Member after receipt of our notice about the intended modification to the Conditions counts as consent.
- 21.2.4** In the notice summarising the modifications MY-HAMMER AG draws the Member's attention to the above-mentioned period of time and to the legal consequences of its expiry if the opportunity to object is not taken. If the Member objects within the period allowed and in writing or in electronic text form, the Membership Agreement will continue according to the previous conditions. The contractual rights of the parties to terminate the Membership Agreement remain unchanged.
- 20.3** In the notice summarising the modifications MY-HAMMER AG draws the Member's attention to the above-mentioned period of time and to the legal consequences of its expiry if the opportunity to object is not taken. If the Member objects within the period allowed and in writing or in electronic text form, the Membership Agreement will continue according to the previous conditions. The contractual rights of the parties to terminate the Membership Agreement remain unchanged.
- 20.4** These Conditions and all matters arising out of or in connection with them or their subject matter including the Membership Agreement, shall be governed by, and construed in accordance with, the English law.
- 20.5** We and the Member irrevocably agree that the English courts shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions or their subject matter including the Membership Agreement.

We sincerely hope that Members will always be satisfied with MyHammer and the service we provide. However if a Member has any query or complaint about us or any claim against us, we would like to do our best to resolve this as soon as possible. To give us this opportunity, please don't hesitate to contact us.