

## Supply of Goods and/or Service

### ELECOMM LIMITED

#### 1. Interpretation

**1.1** The definitions and rules of interpretation below apply in these terms.

**Customer:** the person, firm or company who purchases the Goods and Services from Elecomm Ltd.

**Elecomm:** Elecomm Limited, the supplier of Services subject to these terms. Elecomm Limited is registered under company number 4838546. Elecomm address is Unit 5, Nine Trees Trading Estate, Morthen Road, Thurcroft, Rotherham, S66 9JG. Site (s): the place(s) where delivery of the Services is to take place.

**Goods:** any goods (i.e. materials and tools) necessary for Elecomm to perform the Services or as set out in the Order Confirmation.

**Order Confirmation:** a confirmation in writing from Elecomm that it will supply the Services subject to these terms. Each Order Confirmation is a separate contract.

**Services:** the services set out in the Order Confirmation. This term shall include Goods unless otherwise stated.

**Working Days** Monday to Friday excluding Bank Holidays.

**Working Hours:** 8.00am to 5.00pm on Working Days.

**1.2** A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

**1.3** Words in the singular include the plural and in the plural include the singular.

**1.4** A reference to one gender includes a reference to the other gender.

**1.5** Condition headings do not affect the interpretation of these conditions.

#### 2. Application of Terms

**2.1** Subject to any variation under clause 2.3 each Order Confirmation shall be on these terms to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

**2.2** No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the contract between the parties simply as a result of such document being referred to.

**2.3** These conditions apply to all Elecomm's sales and any variation to these conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by director of Elecomm. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Elecomm which is not set out in the Order Confirmation. Nothing in this condition shall exclude or limit Elecomm's liability for fraudulent misrepresentation.

**2.4** Each order or acceptance of a quotation for Services by the Customer from Elecomm shall be deemed to be an offer by the Customer to buy Goods and/or Services subject to these conditions.

**2.5** No order placed by the Customer shall be deemed to be accepted by Elecomm until a written acknowledgement of the Order Confirmation is issued by Elecomm or (if earlier) Elecomm delivers the Goods or commences the Services to the Customer.

**2.6** The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

**2.7** Any quotation is given on the basis that no contract shall come into existence until Elecomm despatches an Order Confirmation to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that Elecomm has not previously withdrawn it.

#### 3. Description

**3.1** The quantity and description of the Services shall be as set out in the Order Confirmation.

**3.2** All samples, drawings, descriptive matter, specifications and advertising issued by Elecomm and any descriptions or illustrations contained in Elecomm's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and / or Services described in them. They shall not form part of the Order Confirmation and this is not a sale by sample.

## 4. Delivery

- 4.1** Unless stated in the Order Confirmation, delivery of the Goods shall take place at the Site where Services are to be performed.
- 4.2** Any dates specified by Elecomm for delivery of the Goods and / or commencement of Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.3** Subject to the other provisions of these conditions Elecomm shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and /or commencement of the Services (even if caused by Elecomm's negligence), nor shall any delay entitle the Customer to terminate or rescind the Order Confirmation unless such delay exceeds 180 days.
- 4.4** If for any reason Elecomm is unable to deliver the Goods on time because the Customer has not provided appropriate Site conditions, instructions, documents, licences or authorisations:
- (a)** Risk in the Goods shall pass to the Customer (including for loss or damage caused by Elecomm's negligence);
  - (b)** The Goods shall be deemed to have been delivered; and
  - (c)** Elecomm may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and
  - (d)** The Customer shall be liable for all costs and expenses reasonably incurred as a consequence of such non-delivery.
- 4.5** [The Customer shall provide at the Site and at its expense adequate and appropriate equipment and manual labour for loading / unloading of the Goods.]

## 5. Change Control

- 5.1** In the course of carrying out the Services set out in an Order Confirmation it may become apparent that change to the Order Confirmation are necessary. Changes may be suggested by either party. Elecomm will assess the impact of any change and provide written details to the Customer (e.g. extra

charge, timetable change). The additions / change notice shall form part of the Order Confirmation.

- 5.2** Subject to clause 5.3 and 7.4 below, Elecomm shall not be obliged to carry out a change until the change notice has been authorised.
- 5.3** Where on commencement of Services Elecomm finds that clause 2.6 does not apply, Elecomm shall use the process set out in clause 5.1 to advise the Customer of relevant change. To ensure that the project is not delayed in the absence of response from the change notice issued under the clause 5.3 shall be deemed to be accepted by the Customer 3 days after service.

## 6. Risk/Title

- 6.1** The Goods are at the risk of the Customer from the time of delivery. The Services are at the risk of the Customer from the time of performance.
- 6.2** The Customer shall protect the Site at all times throughout the provision of Service. Further, the Customer shall indemnify and hold Elecomm harmless against any losses, damages, costs or claims arising from a breach of this clause. This may include, but is not limited to, loss or theft of Elecomm's equipment from the Site.
- 6.3** Ownership of the Goods shall not pass to the Customer until Elecomm has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a)** The Services; and
  - (b)** All other sums which are or which become due to Elecomm from the Customer on any account.
- 6.4** Until ownership of the Goods has passed to the Customer, the Customer shall:
- (a)** Hold the Goods on a fiduciary basis as Elecomm's bailee;
  - (b)** Store the Goods (at no cost to Elecomm) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Elecomm's property;
  - (c)** Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - (d)** Maintain the Goods in satisfactory condition and keep them insured on Elecomm's behalf for their full price against all risks to the reasonable satisfaction of Elecomm. On request the Customer shall produce the policy of insurance to Elecomm.

**6.5** The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

- (a)** Any sale shall be effected in the ordinary course of the Customer's business at full market value; and
- (b)** Any such sale shall be a sale of Elecomm's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

**6.6** The Customer's right to possession of the Goods shall terminate immediately if:

- (a)** the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b)** the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under these terms or any other contract between Elecomm and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- (c)** The Customer encumbers or in any way charges any of the Goods.

**6.7** Elecomm shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Elecomm.

**6.8** The Customer grants Elecomm, its agents and employees an irrevocable licence at anytime to enter

any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

**6.9** Where Elecomm is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by Elecomm to the Customer in the order in which they were invoiced to the Customer.

**6.10** On termination of the Order Confirmation / contract, howsoever caused, Elecomm's (but not the Customer's) rights contained in this condition 6 shall remain in effect.

## **7. Price**

**7.1** The price for Services shall be at the current rates for services or as set out in the Order Confirmation.

**7.2** The price for the Services shall be exclusive of any value added tax and all costs or charges over and above those stated within the order confirmation.

**7.3** The price for Services shall be subject to review and increases in the rates shall be notified to the Customer and apply to the Order Confirmations outstanding. The price for Goods may also be increased in circumstances where the price of raw materials or other supply costs (such a labour and sub-contractor costs) are increased beyond the reasonable control of Elecomm.

**7.4** Where an Order Confirmation agrees either a fixed price or on time and material basis, work outside Working Hours to fulfil the Services will be an additional charge at Elecomm's outside Working Hours rate. A change notice is not necessary to validate this charge (see clause 5).

## **8. Payment**

**8.1** Payment of the price for the Goods and Services is due in pounds sterling 30 days from the date of invoice.

**8.2** Time for payment shall be of the essence.

**8.3** No payment shall be deemed to have been received until Elecomm has received cleared funds.

**8.4** Where any amount due to Elecomm is not paid in full by the due date (clause 8.1), Elecomm shall be entitled (without prejudice to any other right or remedy) to suspend Service until payment is made in full. Elecomm shall give the Customer not less than 3 Working Days notice of the suspension. In addition, Elecomm shall be entitled to a

fair and reasonable payment of costs incurred resulting from the suspension.

**8.5** The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Elecomm to the Customer.

**8.6** If the Customer fails to pay Elecomm any sum due pursuant to the Order Confirmation, the Customer shall be liable to pay interest to Elecomm on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds TSB Bank PLC, accruing on a daily basis until payment is made, whether before or after any judgment. Elecomm reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## 9. Quality

**9.1** Where Elecomm is not the manufacturer of the Goods, Elecomm shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to Elecomm. The warranties set out in Condition 9.2 do not extend to parts, materials or equipment not supplied by Elecomm.

**9.2** Elecomm warrants that (subject to the other provisions of these conditions);

**9.2.1** In the case of Goods, upon delivery the Goods shall:

- (a)** Be free from defects in material and workmanship;
- (b)** Correspond to their specification at the time of delivery; and
- (c)** Be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to Elecomm in writing and Elecomm has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of Elecomm.

**9.2.2** In the case of Services, Elecomm shall perform the Services with reasonable care and skill.

**9.3** Elecomm shall not be liable for a breach of any of the warranties in condition 9.2 unless:

- (a)** the Customer gives written notice of the defect to Elecomm, and, if the defect is as a result of damage in transit to the carrier, within 3 days of the time when the Customer discovers or ought to have discovered the defect; and

**(b)** Elecomm is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by Elecomm) returns such Goods where practicable to Elecomm's place of business for the examination to take place there.

**9.4** Elecomm shall not be liable for a breach of any of the warranties in condition 9.2 if:

- (a)** The Customer makes any further use of such Goods after giving such notice; or
- (b)** The defect arises because the Customer failed to follow Elecomm's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c)** The Customer alters or repairs such Goods without the written consent of Elecomm.

**9.5** Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with any of the warranties in condition 9.2 Elecomm shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata rate provided that, if Elecomm so requests, the Customer shall, return the Goods or the part of such Goods which is defective to Elecomm.

**9.6** If Elecomm complies with condition 9.5 it shall have no further liability for a breach of any of the warranties in condition 9.2 in respect of such Goods.

**9.7** Any Goods replaced shall belong to Elecomm until paid in full.

## 10. Limitation Of Liability

**10.1** Subject to clause 4, clause 5 and clause 9, the following provisions set out the entire financial liability of Elecomm (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a)** Any breach of these terms;
- (b)** Any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
- (c)** Any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

**10.2** All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) and/ or Section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the contract.

**10.3** Nothing in these conditions excludes or limits the liability of Elecomm:

- (a) For death or personal injury caused by Elecomm's negligence; or
- (b) Under section 2(3), Consumer Protection Act 1987; or
- (c) For any matter which it would be illegal for Elecomm to exclude or attempt to exclude its liability; or
- (d) For fraud or fraudulent misrepresentation.

**10.4** Subject to condition 10.2 and condition 10.3:

- (a) Elecomm's 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 the Contract shall be limited to the Contract price; and
- (b) Elecomm shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 11. Assignment

- 11.1** Elecomm may assign these terms or any part of it to any person, firm or company.
- 11.2** The Customer shall not be entitled to assign these terms or any part of it without the prior written consent of Elecomm.

## 12. Force Majeure

Elecomm reserves the right to defer the date of delivery or to cancel the Order Confirmation or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Elecomm including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party'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 ???

Days, the Customer shall be entitled to give notice in writing to Elecomm to terminate the Order Confirmation.

## 13. Termination

- 13.1** An individual Order Confirmation will terminate upon delivery of Goods and/or completion of the Service and payment in full. Further, either party may terminate a particular Order Confirmation by giving to the other not less than 7 days notice in writing.
- 13.2** Upon termination (howsoever caused) Elecomm shall be entitled to payment for all time incurred (on a man hour rate basis) until expiry of the notice to terminate and expenses. The Customer shall also pay for other costs (including but not limited to materials purchased and tool hire) contracted in contemplation of Services subject always to mitigation.
- 13.3** In addition to the rights of termination pursuant to clause 13.1 either party may terminate an Order Confirmation forthwith by notice in writing to the other of the other:-
  - (a) Commits a breach of these terms which in the case of a breach capable of remedy shall not have been remedied within 30 days of the receipt by the other of a notice from the innocent party identifying the breach and requiring its remedy.
  - (b) Is unable to pay its debts or entered into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under these terms or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action within the opinion of the party giving notice means that the other may be unable to pay its debts.
- 13.4** Termination of an Order Confirmation for whatever reason shall not affect the accrued rights of the parties arising in any way out of these terms at the date of termination and in particular but without limitation the right to recover damages against the other and all provisions which are expressed to survive these terms shall remain in full force and effect.



## 14. General

- 14.1** Each right or remedy of Elecomm under these terms is without prejudice to any other right or remedy of Elecomm whether under these terms or not.
- 14.2** If any provision of these terms is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, void able, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, void ability, unenforceability or unreasonableness be deemed severable and the remaining provisions of these terms and the remainder of such provision shall continue in full force and effect.
- 14.3** Failure or delay by Elecomm in enforcing or partially enforcing any provision of these terms shall not be construed as a waiver of any of its rights under these terms.
- 14.4** Any waiver by Elecomm of any breach of, or any default under, any provision of these terms by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms.
- 14.5** The parties to these terms do not intend that any term shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

## 15. Disputes

- 15.1** The parties shall attempt to resolve any dispute arising out of or relating to these terms through negotiations between senior executives of the parties who have authority to settle the same.
- 15.2** If the matter is not resolved through negotiation, the parties will attempt to resolve the dispute in good faith through an Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre for Dispute Resolution.
- 15.3** If the matter has not been resolved by an ADR procedure within 30 days of the initiation of that procedure, or if either party will not participate in an ADR procedure, the dispute shall be decided by the High Court of England and Wales and the parties submit to its exclusive jurisdiction for that purpose.
- 15.4** These terms shall be governed by the laws of England Wales.

## 16. Communications

- 16.1** All communications between the parties about these terms shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- (a)** (In case of communications to Elecomm) to its registered office or such changed address as shall be notified to the Customer by Elecomm; or
  - (b)** (in the case of the communications to the Customer) to the registered office of the addressee (if it is a Elecomm) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to Elecomm by the Customer.
- 16.2** Communications shall be deemed to have been received:
- (a)** If sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - (b)** If delivered by hand, on the day of delivery; or
  - (c)** If sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 16.3** Communications addressed to Elecomm shall be marked for the attention of Mr Paul Mansell.

**The parties agree to these terms and sign below in confirmation of the same.**

**Signed for and on behalf of**

**[CUSTOMER]**

**Name of Customer** .....

**Address of Customer** .....

.....

**Signatory Name** .....

**(Print)**

**Signature/Position** .....

**Date** .....

**Signed for and on behalf of Elecomm Limited**

**Director** .....

**Date** .....