

## **Terms of Supply – Goods & Services. ELECOMM LIMITED**

### **1. Interpretation**

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

**Construction Act:** Part II of the Housing Grants, Construction and Regeneration Act 1996, as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009.

**Contract:** the contract between Elecomm and the Customer for the supply of the Services incorporating these terms, the Order Confirmation and any other documents referred to in the Order Confirmation.

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

**Elecomm:** Elecomm Limited (company number 4838546, registered office C4 Beighton Link Business Park, Old Colliery Way, Beighton, Sheffield S20 1DJ), the supplier of Services subject to these terms. Elecomm Limited is registered under company number 04838546.

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

**Insolvent:** a party is insolvent if takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business.

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

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

**Site(s):** the place(s) where delivery of the Services is to take place.

**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** Clause headings are for ease of reference only and do not affect the interpretation of these terms.

**1.6** A reference to a “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s successors and permitted assigns.

### **2. Application of Terms**

**2.1** Subject to any variation under clause 2.3 the Contract 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 simply as a result of such document being referred to.

**2.3** These terms apply to all Elecomm’s sales and any variation to these terms and any representations about the Services shall have no effect unless expressly agreed in writing and signed by a 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 clause shall exclude or limit Elecomm’s liability for fraudulent misrepresentation.

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

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

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

**2.7** Any quotation from Elecomm is not an offer and is given on the basis that no contract shall come into existence until Elecomm issues 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 (which Elecomm reserves the right to do at any time).

### **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 Contract, 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 performance of Services are intended to be an estimate and, whilst Elecomm shall use reasonable endeavours to meet such dates, 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. If Elecomm is delayed in delivering the Goods and/or performance the Services by any matter beyond its reasonable control, any specified dates for delivery and/or performance shall be subject to reasonable extension to accommodate the period of delay.

**4.3** 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 actual 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.

**4.4** The Customer shall:

**4.4.1** provide at the Site and at its expense adequate and appropriate equipment and manual labour for loading / unloading of the Goods;

**4.4.2** co-operate with Elecomm in all matters relating to the Services;

**4.4.3** provide Elecomm, its employees, agents, and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Elecomm for the performance of the Services;

**4.4.4** provide Elecomm with such information and materials as Elecomm may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

**4.4.5** obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

**4.5** In the absence of any specific instructions from the Customer, Elecomm shall progress the Services in a manner and sequence which it thinks fit. It is the Customer's responsibility to notify Elecomm in writing of the requirements of any programme for the Services and any changes thereto.

### **5. Change Control**

In the course of carrying out the Services it may become apparent that changes to the Order Confirmation are necessary. Changes may be suggested by either party. Elecomm also reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Elecomm shall notify the Customer

in any such event. 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 Contract.

**5.1** Subject to clauses 5.3 and 7.4, Elecomm shall not be obliged to carry out a change until the change notice has been authorised.

**5.2** Where on commencement of Services Elecomm finds that clause 2.6 does not apply, or if the condition of the Site is different to the conditions that Elecomm has allowed for, 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 a response from the Customer, the change notice issued under 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 that Elecomm completes performance of the Services.

**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

- (a)** 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's right to possession of the Goods shall terminate immediately if:

- (a)** the Customer is Insolvent; 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 the Contract 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
- (c)** the Customer encumbers or in any way charges any of the Goods.

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

**6.7** The Customer grants Elecomm, its agents and employees an irrevocable license at any time 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.

**6.8** 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.

**6.9** On termination of the Contract, howsoever caused, Elecomm's (but not the Customer's) rights contained in this clause 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 any balance of Services outstanding. The price for Goods may also be increased in circumstances where the price of raw materials or other supply costs (such as labour and sub-contractor costs) are increased beyond the reasonable control of Elecomm.

**7.4** Where an Order Confirmation specifies 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** The due date for payment of the price for the Goods and Services is the date of each invoice issued by Elecomm. The final date for payment is 30 days from the date of each invoice. Each invoice shall specify the sum Elecomm considers to be due on the due date for payment and the basis on which that sum is calculated and, if the Construction Act applies, Elecomm's invoices shall be a notice for the purposes of section 110A(1).

**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 in pounds sterling.

**8.4** If the Customer intends to pay Elecomm less than the sum specified in an invoice, it shall issue a notice to Elecomm not later than 7 days before the final date for payment, specifying the sum it considers to be due at the date the notice is given and the basis on which that sum is calculated.

Where any amount due to Elecomm is not paid in full by the final date for payment date (clause 8.1), Elecomm shall be entitled (without prejudice to any other right or remedy) to suspend performance of any or all of its obligations under the Contract until payment is made in full. Elecomm shall give the Customer not less than 7 days' notice of the suspension. In addition, Elecomm shall be entitled to a fair and reasonable payment of costs reasonably 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 Contract, the Customer shall be liable to pay interest to Elecomm on such sum from the final 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 costs 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 by the manufacturer. The warranties set out in clause 9.2 do not extend to parts, materials or equipment not manufactured by Elecomm.

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

**9.2.1** in the case of Goods, for a period of 12 months from delivery the Goods shall:

- (a) be free from defects in material and workmanship;
- (b) correspond to their specification; 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; and

**9.2.2** in the case of Services, Elecomm shall perform the Services with reasonable care and skill and, to the extent Elecomm carries out any design, the standard of reasonable care and skill Elecomm shall exercise will be that of an appropriately qualified professional designer of the relevant discipline experienced in carrying out design similar to such design.

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

- (a) the Customer gives written notice of the defect to Elecomm within the period of 12 months from the date of delivery of the Goods or

completion of the Services, or if the defect is as a result of damage to Goods 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 any Goods or Services alleged to be defective and the Customer (if asked to do so by Elecomm) returns any 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 clause 9.2 if:

- (a) the Customer makes any further use of such Goods or Services 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 Services or (if there are none) good trade practice; or
- (c) the Customer alters or repairs such Goods or Services without the written consent of Elecomm.

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

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

**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 terms 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 clause 10.2 and clause 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, liquidated damages, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect, or consequential, or any claims for consequential loss or damage whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## **11. Assignment and sub-contracting**

**11.1** Elecomm may assign the benefit of the Contract or any part of it to any person, firm, or company.

**11.2** The Customer shall not be entitled to assign the benefit of the Contract or any part of it without the prior written consent of Elecomm.

**11.3** Elecomm shall be entitled in its discretion to use sub-contractors to complete the Services. The Customer shall not be entitled to sub-contract any of its obligations under the Contract without the prior written consent of Elecomm.

## 12. Force Majeure

Elecomm reserves the right to defer the date of delivery or to terminate the Contract (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, pandemic, 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 180 days the Customer shall be entitled to give notice in writing to Elecomm to terminate the Contract.

## 13. Termination

**13.1** Elecomm may terminate the Contract at any time by giving to the Customer not less than 7 days' notice in writing.

**13.2** In addition to Elecomm's rights of termination pursuant to clause 13.1 either party may terminate the Contract forthwith by notice in writing to the other if the other:-

(a) commits a breach of the Contract 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; or

(b) is Insolvent

**13.3** 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) reasonably incurred in contemplation of Services subject always to mitigation.

**13.4** Termination of the Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Contract at the date of termination and in particular but without limitation the right to recover damages against the other and all provisions which are expressly or impliedly intended to come into or

continue in force on or after termination 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, voidable, unenforceable, or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, 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 do not intend that any term of the Contract 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** Subject to clause 15.4, the parties shall attempt to resolve any dispute arising out of or relating to the Contract through negotiations between senior executives of the parties who have authority to settle the same.

**15.2** Subject to clause 15.4, if the dispute is not resolved through negotiation, the parties will attempt to resolve the dispute in good faith through mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

**15.3** Subject to clause 15.4, if the dispute has not been resolved by mediation within 30 days of the initiation of that procedure, or if either party will not participate in mediation, the dispute shall be decided by the courts of England and Wales and the parties submit to their exclusive jurisdiction for that purpose.

**15.4** If the Contract is a “construction contract” as defined in section 104 of the Construction Act, either party may give notice at any time of its intention to refer any dispute arising under the Contract to adjudication. Any adjudication shall be governed by the Scheme for Construction Contracts (England & Wales) Regulations 1998 and the adjudicator nominating body shall be the Royal Institution of Chartered Surveyors.

**15.5** The Contract shall be governed by the laws of England and Wales.

## **16. Notices**

**16.1** All notices to be given under the Contract terms shall be in writing and delivered by hand or sent by pre-paid first class post or sent by email:

- (a) (In case of communications to Elecomm) to its registered office or email address specified in the Order Confirmation 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 company) 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** Notices shall be deemed to have been received:

- (a) if sent by pre-paid first class post, two Working Days after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery (or next Working Day if not delivered on a Working Day); or
- (c) if sent by email on a Working Day prior to 4.00 pm, at the time of sending and otherwise on the next Working Day.

**16.3** Notices addressed to Elecomm shall be marked for the attention of the Commercial Department.

## **17. Confidentiality and intellectual property**

**17.1** Each party shall keep confidential and not disclose any confidential information concerning the business, affairs, customers, clients, or suppliers of the other party, except to persons who need to know such information for the purposes of carrying out the parties

obligations under the Contract and/or as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**17.2** Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**17.3** Elecomm shall have the right to take photographs of the Services and to publish such photographs, together with details of the Services provided, for promotional purposes, including on its website, on social media and in the media.

**17.4** All intellectual property rights in or arising out of or in connection with the Services (other than intellectual property rights in any materials provided by the Customer) shall be owned by Elecomm.

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

**Signed for and on behalf of  
[CUSTOMER]**

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**Address of Customer**

-----  
**Signatory Name** -----

**Signature** -----

**Date** -----

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

**Director** -----

**Date** -----