

**TERMS AND CONDITIONS (Supply of Goods and Services)**

**DEFINITIONS**

'Customer' means any person, body of persons, agent, firm or Company or group of Companies (acting in its own right or through any employee or agent).

'Customer default' failure of the Customer to follow procedural instructions provided by the Supplier/ Manufacturer in relation to any services provided or any act or omission of the customer its employees, servants or agents whilst using the system.

'Equipment' all plant, materials, stock and components supplied by the Supplier as per any quotation.

'Goods' all components, parts and deliverables referred to in the Supplies quotation

'Services' means maintenance, design, supply of materials, installation, commissioning and verification as per any quotation provided by the Supplier`.

'Supplier' means Efaflex(UK) Ltd Registered Office: 5 & 6 Cedar Court Halesfield17, Telford, Shropshire, TF7 4PF. Company Number 04597069.

**1 BASIS OF CONTRACT**

1.1 The Customer's Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

1.2 The Customer's Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

1.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.4 In the event of any conflict between these terms and conditions and any other terms and conditions, whether expressed or implied, incorporated or referred to in any communication from the Customer then these terms and conditions shall prevail and the Customers terms and conditions shall be excluded in whole for the Contract.

1.5 No amendment or variation of these terms and conditions or oral promise or commitment related to it shall be valid unless committed to in writing and signed by or on behalf of both parties.

1.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue

**2 CUSTOMER'S OBLIGATIONS**

2.1 The Customer shall:

2.1.1 ensure that the terms of any Order and any information it provides in any Specification(s) or Drawings are complete and accurate. The Supplier reserves the right to adjust its costs should it later be advised of information not previously listed or provided by the customer that will affect the system design;

2.1.2 co-operate with the Supplier in all matters relating to the Services;

2.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with unencumbered access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;

2.1.4 provide the Supplier with such information, power, welfare facilities, works and materials as the Supplier may reasonably require to enable them to provide the Services, and ensure that such information is complete and accurate in all material respects;

2.1.5 obtain and maintain all necessary licences, permits, permissions and consents which may be required for the Services before the date on which the Services are to start;

2.1.6 enable the Supplier to comply with all applicable laws, including health and safety laws;

2.1.7 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, and maintain the Supplier's Materials, tools and equipment in good condition until returned to the Supplier, and not dispose of or use the same other than in accordance with the Supplier's written instructions or authorisation;

2.1.8 As it will be necessary for the Supplier to have a mobile workshop for tools and materials to enable it to carry out its service, the Customer will provide access and parking for the mobile workshop

2.1.9 comply with any additional obligations as set out in the

Suppliers quotation.

2.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer **OR** failure by the Customer to perform any relevant obligation **OR** follow all instructions provided by the Supplier/manufacturer in the use of any service (**Customer Default**) then:

2.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of all Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Custom Default prevents or delays the Supplier's performance of any of its obligations;

2.2.2 the Supplier shall not be liable for any costs or losses, consequential or otherwise, sustained or incurred by the Customer arising directly or indirectly whether foreseen or unforeseen from the Supplier's failure or delay to perform any of its obligations;

2.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

2.3 In the event of a **Customer complaint**, the complaint must be received in writing within **5 days** and detail the complaint. The Customer will permit the Supplier to enter its premises to investigate the complaint and the Supplier will provide a report within a reasonable time setting out its findings and recommendations.

2.4 The customer is responsible for ensuring that their own operatives receive the correct training for the operation of any system **OR** equipment installed or provided by the Supplier in so far as it applies to them.

2.5 Where any of the supplier's employees are admitted to the customer's premises pursuant to the Contract, the customer undertakes that it will take such measures as are necessary to ensure that, as far as reasonably practicable, its premises and any plant, equipment, articles or substances in such premises are safe and without risk to the health of the Supplier's employees. The customer shall indemnify the Supplier against all loss, claim and demands suffered by the Supplier as a result of any breach of this condition by the Customer.

**3 SUPPLIERS OBLIGATIONS**

3.1 The Supplier shall exercise reasonable skill and care in the performance of the Services

3.2 All services to be undertaken by the Supplier shall be carried out by competent and suitably qualified personnel of the Supplier to the reasonable satisfaction of the Client.

3.3 Whenever relevant, services, materials, and components shall conform to relevant manufacturers' and equipment suppliers' specifications, and all materials and spare parts shall be obtained from the original equipment manufacturers or from suppliers approved by them.

3.4 Where specified in the Quotation, the Supplier shall submit regular reports to the Client detailing services carried out, repairs and adjustments made, condition of equipment and other information which the Client may from time to time reasonably require.

**4 CHARGES AND PAYMENT**

4.1 All prices shall be paid in sterling unless specifically requested otherwise by the Supplier.

4.2 The Supplier reserves the right to increase the price of the services, by giving notice to the Customer any time before delivery, to reflect any increase in the cost of the materials to the Supplier that is due to;

4.2.1 any factor beyond the control of the Supplier to include market forces;

4.2.2 any request by the Customer to change the delivery date(s) quantities design or specification already agreed by the parties and described in the Suppliers quotation;

4.2.3 any delay caused by any instructions from the Customer in respect of the services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

4.3 All Services as well as VAT are invoiced at the price prevailing at the time of Contract unless otherwise agreed in writing with the Supplier.

- 4.4 The Supplier may invoice the Customer on completion of the Services **OR** at intervals to be agreed with the Customer **OR** on a pro forma basis. Payment in respect to a Pro Forma invoice is immediate and before commencement of any services.
- 4.5 Payment in respect to any Invoices is strictly within 30 days of the end of the month of the date stated on the Supplier's invoice unless otherwise agreed between the parties in writing, and in no circumstances, shall the Customer be entitled to make any set-off, counterclaim, deduction or otherwise withhold monies due (other than any deduction or withholding of tax as required by law).
- 4.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then without limiting the Supplier's remedies: -
- 4.6.1 the Customer shall pay interest on the overdue sum at a daily rate of 10% **OR** 5% above bank rate whichever is the higher until final payment;
- 4.6.2 the Supplier is entitled to claim interest at the rate calculated in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, together with additional costs to reflect the reasonable administrative and legal costs incurred in recovering the outstanding monies. This does not affect the other rights of the Supplier under the Contract;
- 4.6.3 the Supplier will be entitled to suspend performance of any Services and will give 5 days' notice in writing to the Customer before suspending any of the Services. If full payment of the outstanding amount is received by the Supplier before expiry of the notice period, the suspension notice will be cancelled;
- 4.6.4 in the event the Customer has an approved credit account the Supplier may suspend it **OR** withdraw it **OR** reduce the Customer credit limit or bring forward the due date for payment. Such action will be taken without notice.
- 4.7 Any Customer payments shall not be subject to any third party arrangements and are in accordance with the terms of any credit account agreed with the Supplier.
- 4.8 No express terms in the contact regarding lack of signature, date of submission of our invoices or return of any documents will prevent payment of any sums otherwise due.
- 5 VARIATIONS**
- 5.1 Any quotation is based on such information, drawings and/or specifications supplied by the Customer. Variations to the quotation at the customer's request or as a result of the Suppliers site survey may lead to a variation in the costs originally quoted even if received after the contract has commenced. The Supplier reserves the right to issue a revised quotation and will only proceed upon receipt of a written Order from the Customer.
- 5.2 The Supplier will not be obliged to vary any of the Services until the variation has been agreed in writing by the Customer, nor will the Supplier be obliged to accept any reduction in the scope of the services that result in reducing the service costs by more than 5%.
- 5.3 The Customer may request a variation to the original quotation for services, after it has been acknowledged by the supplier. If the supplier agrees it reserves the right to issue a further quotation and works will only commence once accepted in writing by the customer.
- 5.4 The Supplier reserves the right to substitute any materials or components not forming part of any specifications of the quoted Services agreed in writing by the Supplier and the Customer agrees to accept the same.
- 6 RISK DELIVERY AND TITLE**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery to their nominated site.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer [in respect of which payment has become due], in which case title to the Goods shall pass at the time of payment of all such sums in cleared funds. Payment shall include all interest and additional costs arising under these terms and conditions.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 6.3.4 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes insolvent, has an administrative receiver appointed for its business or it is compulsorily or voluntarily wound up:
- 6.4.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- 6.4.2 the Supplier may at any time:
- 6.4.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- 6.4.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6.5 The Supplier may at its discretion deliver the Goods or Services by instalments in any sequence.
- 6.6 The Supplier may deliver to the Customer and the Customer shall accept in satisfaction of the Contract a lesser number than the number of Goods and Services ordered.
- 6.7 Any dates by the Supplier for the delivery of Services are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Supplier no regard has been paid to any quoted delivery dates.
- 6.8 If the Customer fails to take delivery of the Services or any part of them on the due date and fails to provide any instruction or documents required to enable the Services to be delivered on the due date. The Supplier may after giving written notice to the Customer store or arrange for the storage of any Goods, plant or equipment and, the Customer accepts that on the service of the notice:
- 6.8.1 risk in such Goods, plant or equipment shall pass to the Customer and they will be responsible for insuring the same against all risks;
- 6.8.2 delivery of Services shall be deemed to have taken place; and
- 6.8.3 the Customer shall pay to the Supplier all costs and expenses including the costs of this contract and additional charges by way of storage and insurance charges arising from the Customers failure.
- 6.9 The Supplier shall not be liable to the Customer for any costs, penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause or at all, nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.
- 7 CANCELLATION OR TERMINATION**
- 7.1 Orders for Goods may be cancelled by written notice at any time before it is allocated to the Contract but if a cancellation notice is received after such Goods, equipment or materials have been purchased and allocated to the Contract; then the customer will be liable to pay for all Goods in full and in cleared funds and such Goods cannot be returned by the Supplier for a refund or re used by the Supplier
- 7.2 The Supplier may at its discretion suspend or terminate the supply of Goods or Services if the customer fails to make payment when and as due or otherwise defaults in any of its obligations under the Contract or any other Contract with the Supplier or becomes insolvent, has an administrative receiver appointed of its business or its compulsory or voluntarily wound up or the Supplier bona fide believes that any of those events may occur, and in case of termination may forfeit any deposit paid.
- 8 LIMITATION OF LIABILITY**
- 8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 8.1.2 fraud or fraudulent misrepresentation; and
- 8.1.3 as expressly stated in these conditions.
- 8.2 Subject to clause 7.1 the Supplier excludes all liability for loss, damage or expense to include loss of profit, consequential losses or otherwise caused to the Customer its property, goods, persons or the like, directly or indirectly resulting from breach of contract, its negligence (or any other claim in tort), breach of statutory duty or delay or failure or malfunction of the systems or components provided by the Supplier, or for whatever reason.

- 8.3 "Services" provided by the Supplier does not include the investigation or rectification of any default or other problem resulting from:
- 8.3.1 the improper use or operation of Equipment by the Customer or third party including failure to comply with operating instructions or guidance;
  - 8.3.2 modification or repair to any of the Equipment made by any person other than the Supplier or a person authorised by the Supplier;
  - 8.3.3 accidental damage to Equipment; or
  - 8.3.4 failure by the Customer to implement recommendations and training previously advised by the Supplier.
- 8.4 Under no circumstances shall the Supplier have any liability of whatever kind for;
- 8.4.1 any defects resulting from wear and tear, accident, Customer Default or the customers improper use of the system except if carried out in accordance with the instructions or advice provided by the Supplier/Manufacturer;
  - 8.4.2 any Goods or Services which have been adjusted, modified or repaired by a third party unless authorised by the Supplier;
  - 8.4.3 the suitability of any Goods or Services for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Supplier;
  - 8.4.4 any variations in the quantities or dimensions of any Services or changes of their specifications or substitution of any materials or components. If the variation or substitution does not materially affect the characteristics of the Services, and the substituted materials or components are of a quality equal or superior to those originally specified.
- 8.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.6 If the Customer establishes that any materials or components have not been delivered, are damaged, defective, of incorrect quantity the Supplier reserves the right to replace **OR** repair with similar components or materials that which are missing, lost or damaged **OR** may allow the Customer credit for their invoice.
- 8.7 The Supplier will not be liable to the Customer for any defect arising in relation to any design or specification by the Supplier if any adjustments, alterations or other work has been carried out by any person except as authorised by the Supplier.
- 8.8 The Supplier shall not be liable for any damage to components or materials whilst in transit if delivery is by a third party carrier. In such an event the Customer gives the Supplier authority to liaise with the carrier in relation to the all claims by the Customer.
- 8.9 Goods or Services supplied to the Customer cannot be returned unless the Customer obtains from the Supplier a returns authorization note. All returns will be made at the Customers risk and expense. The Supplier reserves the right to refuse any Goods or Services returned if they are not intact in their packaging, clean, unused, undamaged and re-saleable.
- 9 CUSTOMER SERVICES**
- 9.1 Any complaint that any components or materials have been delivered and are damaged, not of the correct quality, or do not comply with their description shall be notified in writing by the Customer to the Supplier within three days of delivery.
- 9.2 Any alleged defect shall be notified by the Customer to the Supplier **within 48 hours** of the delivery of the Goods or Services or in the case of any defect which is not reasonably apparent on inspection within 24 hours of the defect coming to the Customers' attention.
- 9.3 The Supplier shall be afforded reasonable opportunity to investigate any claims made under this clause and the Customer shall if so requested in writing by the Supplier promptly return any components or materials which are the subject of any claim securely packed to the Supplier for examination. Carriage will be paid by the customer unless otherwise agreed in writing by the Supplier.
- 9.4 The Supplier shall have no liability with regard to any claim in respect of which the Customer has not complied with the conditions of this contract.
- 10 GENERAL**
- 10.1 The Supplier may sub-Contract the performance of the Services or the Contract in whole or in part.

- 10.2 The Supplier shall have a lien on Customer property in the Supplier's possession for all monies due at any time from the customer and may use, sell or dispose of that property as agent for and at the expense of the customer and apply the proceeds in and towards the payment of such amounts on 28 days notice in writing to the customer. After accounting to the customer for any balance remaining after payment of any amounts due to the Supplier and the costs of sale or disposal the Supplier shall be discharged of any liability in respect of the Customers property.
- 10.3 If the components, equipment **OR** Services are prepared in accordance with any design or specification provided by the customer, the customer shall compensate the Supplier in full on demand for all claims, expenses and liabilities of any nature in connection with them, including any claim, whether actual or alleged, that the design or specification infringes the rights of any third party.
- 10.4 Except for that which is expressly agreed between the parties to be included in the Services, all tools patterns, materials, drawings, specifications and other data provided by the Supplier shall remain its property and all technical information, patentable, copyright and registered designs arising from the executions of any orders shall be the property of the Supplier
- 11 CONFIDENTIALITY**
- 11.1 The Customer shall not at any time whether before or after the termination of these Terms and Conditions or the Contract divulge or use any unpublished technical information deriving from the Supplier or any other confidential information in relation to the Supplier's affairs or business or method of carrying on business.
- 12 FORCE MAJEURE**
- 12.1 The Supplier shall not have any liability for any failure or delay in performance of this contract to the extent the same results from Force Majeure **OR** any event beyond the reasonable control of the Supplier to include adverse weather conditions civil emergency (whether an emergency be declared or not) an act of terrorism fire or explosion; any law or governmental order, rule, regulation, guideline or direction, judgment, order or decree; epidemic or pandemic and any act of God [this list is not exhaustive and other events may apply]; for as long as such event means that performance of the agreement is not possible or is delayed. The party affected by such Force Majeure **OR** event shall promptly notify the other party in writing when such Force Majeure **OR** event causes a delay or failure in performance.
- 13 INFORMATION AND DATA**
- 13.1 The Supplier shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of any Customer data and information.
- 13.2 In the event of termination of this Agreement the Supplier shall when directed to do so by the Customer, instruct all its agents and sub-contractors to, erase information and data provided by the Customer and all copies of any part of the information and data provided from the Supplier's systems and magnetic data.
- 13.3 The Sub-Contractor will ensure that all employees, servants and agents, whilst performing their obligations under this service agreement, will comply in all respects with Data Protection Legislation including the General Data Protection Regulation (Regulation (EU) 2016/679) (**GDPR**).
- 13.4 The Sub-Contractor shall ensure that their employees, servants and agents shall not do or permit anything to be done which might jeopardise or contravene the Employer's or the Contractor's compliance with the Data Protection Legislation.
- 14 GOVERNING LAW**
- 14.1 These Terms and Conditions shall be governed by and constructed in accordance with the Law of England and Wales.
- 15 JURISDICTION**
- 15.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.