

Standard Conditions of Sale

Application of Terms

1. These Conditions together with all of the terms and qualifications set out in the Company's Tender/Quotation form the entire contract between us to the exclusion of all other terms and conditions.
2. Any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document are similarly excluded.
3. All orders for Goods/Works/Services shall be deemed to be an offer by the Client to purchase pursuant to these conditions.
4. Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company.
5. If you are a Consumer (as such defined in section 12 Unfair Contract Terms Act 1077) no provision of these terms shall seek to vary your rights under the law. Definitions
6. "Agreement" – Means the entire agreement between the parties which includes these Conditions together with all of the terms and qualifications set out in the Company's Tender/Quotation.
7. "Client" – Means the legal entity with whom the Company has entered into the Agreement for the Goods/Works/Services.
8. "Company" – Elmton Services Limited, a company incorporated in England Wales with company number 08718983 Registered Head Office: Elmton House, 207A City Road, Sheffield. S2 5HG Tel: 0114 2788640, Email: info@elmtonservices.co.uk
9. "Conditions" – Means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Company.
10. "Delivery Date" – Means the date specified by the Company when the goods are to be delivered to or collected by or on behalf of the Client and/or works performed on site.
11. "Goods" – Means the articles and or equipment which the Client has contracted to buy from the Company.
12. "Services" – Means the services (including provision of labour) which the Client has contracted to buy from the Company.
13. "Price" – Means the price for the Goods and services excluding UK Value Added Tax and any applicable local taxes or withholding tax.
14. "Works" – Means any installation work which the Client has contracted to buy from the Company.



15. Scope of Works – Means the estimate and/or quotation and/or schedule of works in relation to the Works as may be varied or amended from time to time.

Third Parties

16. Nothing in this contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

17. The Company reserves the right to employ such sub-consultants, subcontractors and specialists as it deems necessary to undertake its contractual obligations.

18. Where any other company, person or persons are engaged by the Company on the Clients behalf the Company shall have no liability whatsoever for any negligence, default or omission by such person or persons.

Terms Validity

19. In case of conflict or variance between these conditions and any conditions provided by or referred to by the “Customer” the performance of an order placed by the “Customer” or any part thereof shall be deemed to be an acceptance of all terms and conditions thereof including those set herein. Any terms and conditions contained in any order or acceptance or contract submitted by the “Customer”, shall not in any way affect our terms and conditions of sale and are at variance with these terms and conditions, except where and only in respect of any terms and conditions expressly agreed in writing by the “Company”. To the extent that any terms and conditions purport to cancel our terms and conditions of order they shall be ineffective and shall not be deemed to constitute a counteroffer for the purpose of interpretation of the terms of any resulting contract.

20. The Quotation is valid for 60 days from date of issue.

21. Unless specified otherwise, any quotation should be considered as budgetary unless specific statement is made of a ‘fixed sum’ and specific asset list and survey of the works undertaken.

22. All of the conditions detailed shall apply not only to this tender if accepted but to all order subsequently placed with us by or on behalf of the same “Customer”.

23. In the event that the “Company” issues a “Customer” with a certified commissioning certificate for an installation. The certification will only remain valid providing an equally certified “Company” undertake all future alterations and amendments to the installation.



Client's Obligations

24. The Client shall supply to the Company, promptly and free of charge: a. any instructions, decisions, consents and approvals; and b. any relevant data and information in the possession of the Client or any of his agents, consultants or contractors which the Company may require in order to fulfill its obligations under the Agreement.

25. The Client is responsible for complying with all legal requirements in respect of the use of any Goods/Works/Services and for deciding that the Goods/Works/Services are what is required to meet the purpose for which it is being supplied.

26. The Client warrants that it has the right to have the Goods/Works/Services performed and has obtained all the necessary licenses and approvals. The Client shall indemnify and hold harmless the Company from and against all consequences of any failure in this respect.

27. The Client shall arrange all necessary rights of access to and use of the Client's facilities and sites which the Company may require in order to fulfill its obligations under the Agreement.

28. The client will take reasonable steps to ensure that The Company does not sustain any damage or loss to any equipment stored on the Works site.

29. The Client shall indemnify and hold harmless the Company against any liability for any claim for injury, death, loss or damage wholly, partly, directly or indirectly arising out of any breach of this agreement, breach of statutory duty or negligence.

30. The Client shall indemnify and hold harmless the Company against any liability for any claim for injury, death, loss or damage wholly, partly, directly or indirectly arising out of or in connection with any hazardous substance including asbestos which anyone working for or under the direction of the Company is exposed to as a result of any action or negligence of the Client or any of his agents, consultants or contractors.

31. Unless specified otherwise, no allowance has been made for the disposal of redundant equipment or substances, including but not restricted to, ionising isotopes, batteries and redundant/prohibited gases. Any additional costs and legal obligations associated with any such disposal are to be the responsibility of the "Customer". Confidentiality

32. Each Party shall maintain the confidentiality of any confidential documents and other information received from the other Party. Neither Party shall release or disclose such documents or information, nor permit release or disclosure, without the express instruction or prior permission of the other Party or as obliged to do so by law or by the rules of a recognised security exchange.



33. Any reports, conceptual studies design, and the like are prepared by the Company exclusively for the Client on a confidential basis and are not to be relied on or disclosed to any third party without the written consent of the Company. Insurance

34. Without prejudice to its liability to indemnify The Company, The Client shall maintain appropriate insurances policies (including but not limited to Employer, Public Liability, Professional Indemnity and Contractors All Risk) as are necessary to cover its liability in connection with the Works. As well as ensuring that appropriate occupiers' insurance is maintained where applicable.

35. The Company shall maintain appropriate Employers and Public liability insurance policies and will provide evidence of such insurance upon Request.

Copyright and Ownership of Documents

36. All rights to any intellectual property acquired or developed in connection with this Agreement (whether or not registered or capable of registration) including but not limited to designs, trademarks, patents and copyright in all drawings, reports, calculations, computer data and other documents provided by the Company in connection with the Agreement shall remain the property of the Company.

37. The Company may with the consent of the Client, which consent shall not be unreasonably withheld or delayed, publish alone or in conjunction with any other person articles, photographs or other illustrations relating to the appointment and/or the Goods/Works/Services undertaken by the Company.

38. Any technical specifications prepared or supplied by the Company in relation to the Goods/Works/Services are approximate unless we say otherwise, and we reserve the right to change the technical specifications so long as any changes do not substantially affect what we have agreed to supply or the cost or quality thereof. Design and Design Liability

39. In so far as the Goods/Works/Services have been designed by the Company (including any further design required as a result of any variation or change to the Goods/Works/Services) the Company shall have in respect of any defect or deficiency in such design the like liability whether under statute or otherwise as would an Engineer, or, other appropriate professional designer.

40. Should the Client require, for an additional fee, the Company would be prepared to consider entering into warranties with funders, purchasers or tenants of any land, or development for which the Goods/Works/Services have been provided, provided always



that such warranties are in a form acceptable to the Company and grant no greater benefits to the beneficiary than those available to the Client under this Agreement.

41. In the event that there is an error in any drawing or document, or inaccuracy in any measurement or quantity provided to the Company by The Client, that result in an increase to the contract price, and/or will require additional time adding to the completion date. Then upon giving written notice to The Client, The Customer shall set out the additional cost and/or time required to progress and complete The Works in order to correct the error and/or inaccuracy and The Client agrees to make payment of the costs and to award the additional time as notified by The Company.

Delivery of Goods/Works/Services

42. Unless specified otherwise it should be assumed that we would require a minimum of 4 weeks' notice for commencement of works, this may be longer for mobilisation of installation staff or obtaining any specialist equipment/parts.

43. The "Company" will require an official order detailing work required and any quotation references, this order should be sent/emailed to the head office prior to being able to commence any works or the placement of any order on the "Company" suppliers (email: info@elmtonservices.co.uk). All quotations are strictly NET, in the event of the order being placed through a main contractor who by trade custom is entitled to a 2.5% cash discount the price(s) must be advanced by 1/39th.

44. Unless otherwise set out in our Quotation any price quoted by the Company is ex-works and does not include packaging and delivery charges.

45. The Company will decide how equipment will be packaged and any special packing requested by the Client will be charged at the appropriate rate.

46. In the case of Goods shipped the Client must inform us promptly of any damage incurred during transit.

47. The risk in any equipment we sell to you shall pass to you immediately the equipment leaves our premises except when we have agreed to deliver the goods when risk shall pass to you when the equipment is delivered to the address advised to us.

48. The Company shall exercise reasonable skill care and diligence in the provision of the Goods/Works/Services hereunder and shall use reasonable endeavors to deliver/install/perform them in accordance with any programme or delivery dates agreed with the Client, but these shall be regarded as approximate and time shall not be of the essence of the contract.



49. If by reason of any agreed variation or of any act or omission on the part of the Client or their servants or agents, or any other matter, the Company is delayed in the performance of the Goods/Works/Services, the Client shall grant the Company from time to time in writing either prospectively or retrospectively such extension of the Date for Delivery and/or Completion as may be reasonable.

50. The Company shall have no liability for any failure or delay in the provision of the Goods/Works/Services or any part thereof resulting from any condition or circumstances that in any way affects the Company's ability to meet any Delivery Date or programme.

51. The Client shall make all necessary arrangements to take delivery of the Goods/Works/Services whenever they are tendered for delivery.

52. The Company may deliver the Goods/Works/Services by separate consignments or stages.

53. The Client shall indemnify and hold harmless the Company against any failure to make the necessary arrangements to accept delivery of the Goods/Works/Services at the agreed times, or any condition or circumstances that in any way affects the Company's ability to meet any Delivery Date or programme.

54. In the event that the Client and the Company have agreed a daily or weekly amount of damages that the Company shall be entitled to recover in the event of any extension to the Delivery Date or programme this shall be set out at Schedule 1 to these Standard Conditions of Sale or in the Company's Tender/Quotation form. Returns

55. No return or replacement will be considered without the prior written authorisation of the Company.

56. If the Client returns equipment without prior written authorisation, the Company will notify the Client that it shall be collected at the Client's expense. The Company will hold any such equipment for one month from the date of notice after which it will be disposed of without any liability to the Client.

57. Unless we have expressly agreed to provide a credit or replacement, whether under the warranty or otherwise, the exchange of returned equipment for credit and/or replacement is entirely at our discretion, regardless of whether prior authorisation for the return has been granted. Site Operations

58. The Company shall take reasonable precautions and use reasonable endeavors to minimise damage to property, including utilities and other sub-surface obstructions. If, notwithstanding such precautions and endeavors, any such property is damaged, the cost of rectification and all other losses shall be borne by the Client.



59. The Company agrees to uphold and comply to any Health and Safety regulations that are applicable to the Company and The Site of The Works, and The Client agrees to the same.

60. The Client shall be responsible for doing all that is necessary in order enable the Company to execute the Goods/Works/Services in such a manner and at such times so that they are properly and fully integrated with the work of the Client, or as the case may be the Employer or the Main Contractor and/or their respective subcontractors and suppliers and in a manner, which will not restrict or prohibit the completion of the Goods/Works/Services by the Company.

61. The Client shall apply for, obtain and meet the cost in order to provide such licenses and permissions as are required to perform the Works, unless otherwise specified as to be provided by the Company. The Company will only obtain those necessary licenses and permissions required to enable the Works as detailed in our quotation. The Company shall not be obliged to commence any Works unless and until all necessary licenses and permissions required to perform the Works have been obtained.

62. In the event of the Company being delayed or being required to move, alter re-align or re-test any works as a consequence of any failure by the Client to comply with this Clause, the Client shall indemnify the Company against any costs, losses, claims or expenses reasonably incurred by the Company as a result.

63. The Client shall make available on the Site for use by the Company for the purposes of the Goods/Works/Services such supplies of electricity, water, gas, air and other services as may be reasonably required and at no cost to the Company.

64. The Company shall only carry out waste management and disposal that is required during the carrying out of the Works unless otherwise agreed in writing.

65. The Company reserves the right to make a claim for additional costs in the event that they are asked to perform works above 6m above ground level, unless specifically detailed within the scope of works.

66. The Goods/Works/Services will be deemed to be ready for use even if there are minor matters outstanding providing, they do not materially affect the use of the Goods/Works/Services.

67. In regard to any tests on Site, the Client shall, provide free of charge such fuel, electricity, skilled and unskilled labour, materials, stores, water, apparatus, instruments and feedstocks as may be required and as may reasonably be requested by the Company to enable the tests to be carried out effectively.



68. The Client shall provide all of the above at such dates and times as agreed with the Contractor and so as to enable the Company to meet its obligations in accordance with the Agreement.

69. The Client shall indemnify the Company against any failure by the Client to provide all that is necessary to enable the Company to carry out its obligations, on the dates and times agreed, and in the event of any such failure, the Goods/Works/Services shall be deemed to have passed the performance tests for all the purposes of the contract. Instructions and Variations

70. The Client may issue any reasonable Client's Instruction in writing to the Company in regard to the, Goods/Works/Services including the ordering of any variation thereto.

71. Any oral instruction given to the Company shall have no validity whatsoever unless and until confirmed by the Client in writing.

72. The Company shall not be obliged to act upon any written instructions but shall, provide the Client with a written quotation for implementing any variation resulting from the instruction with a view to agreeing the amount payable for the variation in advance.

73. Variations to the Goods/Works/Services shall be valued and determined where appropriate by reference to the rates and prices specified in the Agreement for similar or analogous work. If there are no such rates or prices or if in the opinion of the Company, they are not applicable then the Company shall be entitled to such sum as is fair and reasonable in all the circumstances.

74. In the event that compliance with a Client's instruction will require the Company to amend the date for performance of the Goods/Works/Services, then the Company will advise the Client accordingly with a view to agreeing a revised date for performance.

75. In the event that the Parties cannot agree the valuation of any variation or any revised date for delivery which would be required in order to accommodate any variation, then the Company shall be entitled to perform the Goods/Works/Services in accordance with the original Agreement and the Client's instruction shall be of no contractual effect; save that the Company shall be entitled to recover the reasonable cost of preparing the written quotation from the Client.

76. The Company reserves the right to be paid for any increase in Materials.

Title and Risk

77. The Goods/Works/Services shall be at the Client's risk as from delivery.



78. In spite of delivery having been made, property in the Goods/Works/Services shall not pass from the Company until:

79. The Client shall have paid the price plus VAT and/or any other taxes in full.

80. No other sums whatsoever shall be due from the Client to the Company.

81. Until property in the Goods/Works/Services passes to the Client, the Client shall hold the Goods/Works/Services as bailee for the Company. The Client shall store the Goods/Works/Services separate from all other Goods in its possession and in a proper manner and in conditions, which adequately protect and preserve them. All such Goods/Works/Services shall be marked in such a way that they are clearly identified as the Company's property.

82. Notwithstanding that the Goods/Works/Services or any of them remain the property of the Company the Client may sell or use the Goods/Works/Services in the ordinary course of the Client's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Client on the Client's behalf and the Client shall deal as Principal when making such sales or dealings. Until property in the Goods/Works/Services passes from the Company the entire proceeds of any sale or otherwise shall be held in trust for the Company and shall not be mixed with other money or paid into any over-drawn bank account and shall be at all material times identified as the Company's money.

83. The Company shall be entitled to recover the price plus VAT and/or any other taxes notwithstanding the property in any of the Goods/Services/Works has not passed from the Company.

84. Until such time as property in the Goods/Works/Services passes from the Company, the Client shall upon request deliver up such of the Goods/Works/Services as have not ceased to be in existence or returned to the Company. If the Client fails to do so the Client hereby grants an irrevocable license (or the local equivalent thereof) to the Company in order to enable the Company to enter upon any premises owned, occupied or controlled by the Client where the Goods/Works/Services are situated and repossess same.

Payment

85. The Company shall raise invoices or applications on a monthly basis on dates to be agreed with the Client, or in the absence of such agreement, on the last working day of the month and the Client shall pay the Company the amounts stated on the invoice including UK VAT and/or any other taxes where applicable.



86. Invoices for maintenance contracts will be issued in arrears after each maintenance visit or in the case of maintenance contracts in excess of £15,000:00 per annum 12 equal monthly invoices will be issued.

87. The Due Date for payment of each invoice shall be the 14th day of the month following the month to which the invoice refers.

88. Within 5 days of the Due Date the Client shall issue a combined Payment and Pay Less Notice setting out the amount that the Client intends to pay. In the event that this amount differs from the amount claimed by the Company in its invoice, and in order for the Client's notice to constitute a Valid Pay Less Notice, the Client must clearly set out sufficient detail as to identify exactly what elements of the Company's application or invoice is not being valued by the Client and why.

89. In the absence of a Payment Notice or a Valid Pay Less Notice the Client shall pay the full amount as set out in the Company's application or invoice by the Final Date for Payment.

90. The Final Date for Payment is 16 days from the Due Date.

91. The Client may not withhold any payment after the Final Date for Payment of any sum due under this Agreement unless it has issued a Valid Pay Less Notice and, in any event, if any item or part of an item on an application or invoice is disputed or subject to question by the Client the payment by the Client of the remainder of that application or invoice shall not be withheld.

92. In particular the Client recognizes that where specialised and/or state of the art equipment is incorporated into the Goods/Works/Services, then any problems with such equipment may take time to resolve whilst manufacturers respond. In such cases the Client expressly accepts that they are not entitled to withhold payment of any sums whatsoever whilst manufacturers respond.

93. Any sums remaining unpaid at the Final Date for Payment shall bear interest calculated in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and at the relevant reference rate until such time as they are paid in full. Along with any costs or expenses incurred as a result of having to recover payment that is rightfully due.

94. If the performance of the Goods/Services/Works (including any part thereof which is subcontracted) is affected by any act, omission or default of the Client, its servants or agents, or due to any other reason the amount of any loss and/or expense thereby caused to the Company (whether suffered or incurred by the Company or by other subcontractors employed by the Company on the Goods/Services/Works from whom claims under similar provisions in the relevant sub-contracts have been or are likely to be received by the



Company) shall be notified to the Client and added to the amounts due to the Company.
Suspension

95. Without prejudice to any other rights and remedies which the Company may possess, if the Client shall fail to make any payment in accordance with the terms of this Agreement, the Company shall give to the Client 3 days' notice stating the Company's intention to suspend the performance of all of their obligations under this Agreement. The notice shall state the ground or grounds upon which it is intended to suspend performance.

96. The Company may suspend the further execution of its obligations until such payment is made in full, and suspension under this clause shall not be deemed a failure on the part of the Company. The Company shall resume performance of its obligations once it has both received payment from the Client and had the opportunity to properly re-mobilise its resources.

97. If the Company exercises its right to suspend its obligations then the Company shall be entitled to have the time for completion of its obligations extended by the addition of a period equivalent to any period of suspension and the Client shall not be entitled to make any claim whatsoever against the Company for damages, loss and expense, demobilisation, remobilisation or any other consequential costs incurred as a result of the suspension.

98. In the event that the Company exercises its right to suspend its obligations then the Client shall indemnify the Company against all damages, loss and expense, demobilisation, remobilisation or any other consequential costs incurred as a result of the suspension. All such costs will be shall be payable by the Client in accordance with these terms.

99. In the event that the Company exercises its right to suspend its obligations then the Client shall take all necessary measures in relation to the protection safety and maintenance of the Goods/Works/Services during the suspension at no cost to the Company.

Assignment

100. The Client shall not assign or otherwise transfer any obligation or benefit under this Agreement without the prior written consent of the Company which consent shall not be unreasonably withheld or delayed.

Liability and Warranties

101. The Company warrants that the Goods/Services/Works will at the time of delivery correspond to the Technical specification incorporated in the Agreement.



102. If any defects are found in new equipment manufactured by the Company during the period of one year calculated from the day on which risk passes to you and those defects are caused by faulty materials or workmanship the Company will either repair or replace that equipment at the Company's absolute discretion.

103. This warranty does not cover fair wear and tear and will only apply if the equipment has been used in accordance with the Company's instructions, good engineering practice and has been correctly installed and maintained.

104. This warranty will not apply if the Client fails to inform us within a reasonable period of discovering the fault, and/or allows the equipment to continue to be used or allows anyone to attempt to repair it without our express consent.

105. Unless agreed otherwise any repair or replacement undertaken by the Company shall be carried out during normal working hours which are between 08:00 and 17.00 - Monday to Friday, excluding public holidays.

106. For equipment used overseas the Company's obligations are limited to the supply of replacement parts delivered free on-board UK port.

107. The Company's liability under this warranty shall in no event exceed the purchase price of the individual piece of equipment, and repair or replacement by the Company shall constitute an entire discharge of the Company's liability.

108. The Client shall be responsible for providing at its expense all access, facilities and equipment (including without limitation lifting equipment) necessary to enable the Company to access equipment manufactured by us in order to provide any remedy, repair or replacement in respect of that equipment.

109. Except where the Client is dealing as a "Consumer" as defined in the Unfair Contract Terms Act 1977 Section 12, the warranties set out herewith are the only warranties which shall be given the Company and all warranties, conditions and other terms implied by statute or common law relating to fitness for purpose, merchantability or condition are, to the fullest extent permitted by law, excluded.

110. Notwithstanding anything to the contrary contained in this Agreement any liability whether in contract or in tort, in negligence, for breach of statutory duty or otherwise, for any claim for loss or damage wholly, partly, directly or indirectly arising out of or resulting from or associated in any way with any failure of the Goods/Services/Works or any breach of contract on our part including delay, is excluded and we will not be liable for a) any loss of profit b) any loss of production c) any loss of contracts or opportunity d) any direct or indirect costs or losses e) any indirect or consequential costs including liquidated damages.



111. In any event, notwithstanding anything to the contrary contained elsewhere herein the total liability in aggregate of the Company under or in connection with this Agreement, whether in contract or in tort, in negligence or for breach of statutory duty or otherwise shall be limited to 5% of the price paid or payable to us in accordance with this Agreement.

a) Nothing in these terms seeks to restrict our liability for death or personal injury. b) The liability of the Company for any claim or claims arising out of or in connection with pollution and contamination is excluded.

112. The Client shall look only to the Company for redress if the Client considers there has been a breach of this Agreement. The Client agrees not to pursue any claims in contract, tort or for breach of statutory duty (including negligence) against any individuals working or who worked for the Company at any time. The Client acknowledges that such individuals are entitled to enforce this term of the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

113. Each part of this clause is to be read and construed separately such that if any part of this clause is found to be unreasonable the remaining parts will still remain in full force and effect. Expiry of Liability

114. No action or proceedings under or in connection with this Agreement whether in contract or in tort, in negligence or for breach of statutory duty or otherwise shall be commenced against the Company after the expiry of 6 years from the date of completion of the Goods/Works/Services or such earlier date as may be prescribed by law.

Termination

115. In the event of a breach of this Agreement by the Client the Company may at its absolute discretion give 14 days' Notice of its intention to terminate its appointment setting out the acts or omissions of the Client relied upon as evidence of such breach. If the Client does not, to the reasonable satisfaction of the Company, take expeditious steps to repair the breach during the notice period the Company may terminate its appointment forthwith by further Notice.

116. Termination of the Company's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of the Company.

117. Either party may terminate the Agreement by notice in writing to the other if: a) The other party is unable to pay its debts within the meaning of section 123 Insolvency Act 1986 or convenes a meeting of or makes or proposes to make any arrangement or composition





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with its creditors; or b) A liquidator, receiver, administrative receiver, manager, trustee or similar officer or officeholder is appointed over all or any of the assets. Law

118. This contract shall be subject to the Housing Grants Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 and it shall be subject to English law.

119. Subject to the Company's right to refer any matter to adjudication in accordance with the Scheme for Construction Contracts all disputes or claims arising out of or relating to this contract shall be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit.



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Company Registration No: 08718983 | Company UTR No: 8839015069 | Company VAT No: 172839774