

TERMS AND CONDITIONS (servicing)

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.

'The Contract' the contract is in accordance with any Order or Purchase Order placed by the customer.

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

'Services' means maintenance, design, supply of materials and verification as per any quotation provided by Webb Elec Ltd.

'Supplier' means Webb Elec Ltd. of unit 27 Owen road, Willenhall, WV13 2PY Company Number 01860287.

1 BASIS OF CONTRACT

1.1 The Customer's Order constitutes an offer by the Customer to purchase 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**). To the extent that any of the Services are provided before issue of written acceptance they will be treated as being performed under the Contract

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

1.7 The Client may request the Supplier to provide additional maintenance services and if the Supplier agrees, it will be entitled to provide a further quote in respect to the additional services and will not provide such services until the customer has placed an order or other written acceptance or work has commenced as per clause 1.2 above.

1.8 **WARRANTY** on any equipment provided relates only to new equipment and is manufacturers warranty only and in accordance with their guidelines.

2 DURATION

2.1 All services are provided on an individual basis and will terminate upon completion of the service that appears on the Suppliers quotation.

3 CUSTOMER'S OBLIGATIONS

3.1 The Customer shall:

3.1.1 ensure that the terms of any Order and any information it provides in relation to equipment specification, any drawings or performance requirements are complete and accurate. The Supplier reserves the right to adjust its costs should it later discover that such information is not completely accurate.

3.1.2 ensure that the description of any equipment required is suitable giving consideration to the environment it will be installed into and Health & Safety generally.

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

3.1.4 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;

3.1.5 provide the Supplier with such information, utilities and

materials as the Supplier may reasonably require to enable them to provide the Services, and ensure that any information is complete and accurate in all material respects;

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

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

3.1.8 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;

3.1.9 comply with any additional obligations as set out in the Suppliers quotation.

3.2 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:

3.2.1 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 Customer Default prevents or delays the Supplier's performance of any of its obligations;

3.2.2 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;

3.2.3 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.

3.3 In the event of a **Customer complaint**, the complaint must be received in writing immediately after discovery and all use of the alleged faulty equipment must stop until the Supplier can carry out an investigation into the nature of the problem. 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.

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

3.5 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.

4. SUPPLIERS OBLIGATIONS

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

4.2 In case of emergency, the Supplier will promptly respond to the Client's call for services and emergency call-out telephone contact number will be provided for office and out of office hours.

4.3 Except in an emergency, maintenance services will be carried out between the hours of 8.00am to 4.30pm on weekdays unless otherwise stated in the Quotation.

4.4 Major maintenance services (when these are likely to involve disruption to the Client's business activities if carried out during normal working hours) will be undertaken during hours agreed in

advance between the Client and the Supplier. (This may include weekend working in which case additional costs will be applied).

- 4.5 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.
- 4.6 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.
- 5 CHARGES AND PAYMENT**
- 5.1 All prices shall be paid in sterling unless specifically requested otherwise by the Supplier.
- 5.2 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;
- 5.2.1 any factor beyond the control of the Supplier to include market forces;
- 5.2.2 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;
- 5.2.3 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.
- 5.3 All Services are quoted exclusive of VAT which will be added as appropriate when invoiced at the price prevailing at the time of Contract unless otherwise agreed in writing with the Supplier.
- 5.4 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.
- 5.5 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).
- 5.6 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: -
- 5.6.1 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;
- 5.6.2 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;
- 5.6.3 the Supplier will be entitled to suspend performance of any Services and will give 7 days' notice in writing to the Customer before suspending any further 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;
- 5.6.4 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.
- 5.7 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.
- 5.8 No express terms in the contract regarding lack of signature, date of submission of our invoices or return of any documents will prevent payment of any sums otherwise due.

6 VARIATIONS

- 6.1 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.

- 6.2 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%.
- 6.3 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.
- 6.4 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.
- 7 RISK DELIVERY AND TITLE**
- 7.1 The risk in any equipment delivered to site shall pass to the Customer on completion of delivery.
- 7.2 Title to the equipment shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) [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.
- 7.3 Until title to the equipment has passed to the Customer, the Customer shall:
- 7.3.1 store them separately so that they remain readily identifiable as the Supplier's property;
- 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to them;
- 7.3.3 maintain them in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 7.3.4 give the Supplier such information relating to them as the Supplier may require from time to time.
- 7.4 If before title to the equipment passes to the Customer the Customer becomes insolvent, has an administrative receiver appointed for its business or it is compulsorily or voluntarily wound up:
- 7.4.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- 7.4.2 the Supplier may at any time:
- 7.4.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- 7.4.2.2 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.
- 7.5 Any dates provided 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.
- 8 CANCELLATION OF STOCK**
- 8.1 The Customer may cancel any order for stock items by written notice at any time prior to commencement of the contract but if a cancellation notice is received after stock, equipment or materials have been purchased and allocated to the Contract then the customer will be liable to pay for all stock that has been ordered and cannot be returned by the Supplier for a refund or re used by the Supplier
- 9 LIMITATION OF LIABILITY**
- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 9.1.2 fraud or fraudulent misrepresentation; and
- 9.1.3 as expressly stated in these conditions.
- 9.2 Subject to clause 9.1 the Supplier's total 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 shall be limited to the contract price

- agreed between the parties.
- 9.3 "Services" provided by the Supplier does not include the investigation or rectification of any default or other problem resulting from:
- 9.3.1 the improper use or operation of Equipment by the Customer or third party including failure to comply with operating instructions or guidance;
 - 9.3.2 modification or repair to any of the Equipment made by any person other than the Supplier or a person authorised by the Supplier;
 - 9.3.3 accidental damage to Equipment; or
 - 9.3.4 failure by the Customer to implement recommendations and training previously advised by the Supplier.
- 9.4 Under no circumstances shall the Supplier have any liability of whatever kind for;
- 9.4.1 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;
 - 9.4.2 for any damage or failure to any system maintained by them if such damage or failure is through third party intervention whether deliberately, innocently or negligently;
 - 9.4.3 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;
 - 9.4.4 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.
- 9.5 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.
- 9.6 If the Customer establishes that any equipment has not been delivered, is damaged, defective, or 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.
- 9.7 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.
- 9.8 The Supplier will not be liable for any losses sustained by the client in the event of any 'client default'
- 10. TERMINATION**
- 10.1 The Supplier may give notice to terminate or suspend the Contract if the customer commits a material breach of this contract.
- 10.2 Either party may terminate the Contract if the other party becomes insolvent or has a receiver, manager, administrative receiver or liquidator appointed.
- 10.3 In the event of the customer entering administration or similar the Supplier may request the return of all Goods and equipment stored by the customer.
- 10.4 Upon termination the customer shall pay the Supplier all monies properly due up to the termination date to include monies owed for any materials or equipment ordered by the Supplier. If the Supplier terminates under clause 10.2 or 10.3, the Client will be liable to pay the Supplier a reasonable sum to compensate the Supplier for its loss of profit on the Contract. The Supplier shall be given access to recover any of its equipment, plant and materials at the Site.
- 10.5 Termination shall not affect the accrued rights and liabilities of the parties at the termination date.
- 11 CUSTOMER SERVICES**
- 11.1 Any complaint that any new equipment or repaired items 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 immediately and the equipment complained of is not to be used and must be turned off if in use.

- 11.2 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 who may choose to collect the same.
- 11.3 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.
- 12 GENERAL**
- 12.1 The Supplier may sub-Contract the performance of the Services or the Contract in whole or in part.
- 12.2 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.
- 13 CONFIDENTIALITY**
- 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.
- 14 FORCE MAJEURE**
- The Supplier shall not be liable for any delay, or other failure to perform any part of the Contract, as a result of any factor outside of the Suppliers control, whether an Act of God or otherwise.
- 15 INFORMATION AND DATA**
- 15.1 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.
- 15.2 The Supplier, their servants or agents will comply with all Data Protection legislation in relation to the customer at any given time.
- 16 GOVERNING LAW and JURISDICTION**
- These Terms and Conditions shall be governed by and constructed in accordance with the Law of England and Wales. 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.