

# **TERMS & CONDITIONS**

# ELTA-UK LIMITED

## 1. INTERPRETATION

### 1.1 Definitions

#### Approvals

Any approvals required in respect of the manufacture of the Goods, including those approvals required for regulatory compliance.

#### Business Day

A day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Buyer: the person or firm who purchases the Goods from Elta-UK Limited.

Buyer's Premises: any buildings, offices, accommodations and other facilities of the Buyer or any third party at which the Goods are, or are to be, stored and/or installed, and/or at which the Services are, or are to be, provided.

#### Conditions

The terms and conditions set out in this document as amended from time to time in accordance with clause 17.4. Confidential Information

Any information (however recorded or preserved) of a confidential nature concerning the business, affairs, customers, clients or suppliers of a party or of any member of its Group, including but not limited to information relating to the party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

#### Contract

The contract between Elta-UK Limited and the Buyer for the sale and purchase of the Goods and/or Services in accordance with these Conditions.

#### Design & Application Advice

Any advice on system design or application provided by Elta-UK Limited to the Buyer in relation to the Goods or Services which may include deviations from any Goods Specification or Scope of Works or any other specifications provided by the Buyer.

#### Elta-UK Limited

Elta-UK Limited Limited (registered in England and Wales with company number 00820750).

#### Force Majeure Event

An event which materially interferes with the ability of a party to perform its obligations or duties which is not within the reasonable control of the party affected and which could not with the exercise of due diligence have been avoided, including, but not limited to, acts of God, acts of public

enemies, insurrections, wars or warlike action (whether actual, pending or expected), terrorism, sabotage, threats of terrorism or sabotage, vandalism, accidents, fires, floods, interruption of utility services or acts of government or governmental agency.

#### Free Issue Materials

Materials including data, tools, patterns, input material and other equipment issued by the Buyer to Elta-UK Limited solely for use in relation to the Contract.

#### Goods

The goods (or any part of them) set out in the Order.

#### Goods Specification

Any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and Elta-UK Limited.

#### Group

In relation to a party, means its subsidiaries from time to time, its holding company from time to time and any subsidiaries of such holding company from time to time. A company is a "subsidiary" of another company (its "holding company") if that other company, directly or indirectly, through one of its subsidiaries controls it. For purposes of this definition, "Control" (and, with correlative meanings, the terms "controlled by" and "under common control with") means (a) the possession, directly or indirectly, of the power to direct the management or policies, whether through the ownership of voting securities or by contract relating to voting rights or corporate governance, or (b) the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities or other ownership interest.

#### Order

The Buyer's order for the Goods and/or Services, as set out in the Buyer's purchase order form or the Buyer's written acceptance of Elta-UK Limited' quotation.

#### Personal Data

Has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Buyer is the Data Controller and in relation to which Elta-UK Limited is providing services under the Contract.

#### Services

The services supplied by Elta-UK Limited to the Buyer as set out in the Scope of Works.

#### Scope of Works

The description or specification for the Services provided in writing by Elta-UK Limited to the Buyer.

## 1.2 Interpretation

1.2.1 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3 A reference to writing or written includes emails.

## 2. BASIC OF CONTRACT

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

2.2 The Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Goods Specification and/or Scope of Works are complete and accurate and for giving Elta-UK Limited any necessary information relating to the Goods and/or Services within a sufficient time to enable Elta-UK Limited to perform the Contract in accordance with its terms.

2.3 The Order shall only be deemed to be accepted when Elta-UK Limited issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising produced by Elta-UK Limited and any descriptions or illustrations contained in Elta-UK Limited' catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods and/or Services given by Elta-UK Limited shall not constitute an offer. A quotation shall only be valid for the period specified in Elta-UK Limited' quotation.

## 3. CANCELLATION OF ORDERS AND RETURN OF GOODS

3.1 No Order which has been accepted by Elta-UK Limited may be cancelled by the Buyer except with the agreement in writing of Elta-UK Limited and on the condition that the Buyer shall indemnify Elta-UK Limited in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Elta-UK Limited up to and until the date of the cancellation in connection with the Order or as a result of cancellation.

3.2 The Buyer may, with the agreement in writing of Elta-UK Limited, return any unused Goods, which are "stock" items (i.e. Goods that are within the Elta Select range of branded products sold by Elta-UK Limited at the time of return) to Elta-UK Limited, provided that any such Goods are returned to Elta-UK Limited' premises at the Buyer's expense:

3.2.1 in an unused and re-saleable condition; and

3.2.2 within [one (1)] calendar month of the date of delivery; and

3.2.3 with appropriate Elta-UK Limited return paperwork completed as required by Elta-UK Limited.

3.3 Where the Goods are returned and accepted by Elta-UK Limited to be in an unused and re-saleable condition, Elta-UK Limited will raise a credit in favour of the Buyer. The amount of credit will be calculated on the basis of the price paid by the Buyer for the Goods, less a 25% restocking fee.

3.4 The right set out in clause 3.2 shall not apply in the case of any Goods which are not part of the Elta Select range of branded products sold by Elta-UK Limited at the time of return.

## 4. GOODS

4.1 The Goods shall be as described in the Goods Specification.

4.2 To the extent that the Goods are to be manufactured in accordance with any specification supplied by the Buyer, the Buyer shall indemnify Elta-UK Limited against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Elta-UK Limited in connection with any claim made against Elta-UK Limited for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Elta-UK Limited' use of or compliance with such specification. This clause 4.2 shall survive termination of the Contract.

4.3 Elta-UK Limited reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

4.4 Any Goods to be sold within the EU are required to bear a CE mark. If the Buyer requests Elta-UK Limited to omit a CE mark from the Goods as they are not being sold within the EU, the Buyer shall be responsible for ensuring that the Goods bear the CE mark should they later be sold in the EU. The Buyer shall indemnify Elta-UK Limited against any claim made against Elta-UK Limited as a consequence of the Buyer's failure to comply with any EU legislation in relation to CE marking.

## **5. DELIVERY OF GOODS**

5.1 Elta-UK Limited shall ensure that:

5.1.1 Each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the contract number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

5.1.2 If Elta-UK Limited requires the Buyer to return any packaging materials to Elta-UK Limited, that fact is clearly stated on the delivery note. The Buyer shall make any such packaging materials available for collection at such times as Elta-UK Limited shall reasonably request. Returns of packaging materials shall be at Elta-UK Limited' expense.

5.2 Delivery of international Orders shall be in accordance with the Incoterm specified by Elta-UK Limited when Elta-UK Limited accepts the Order in accordance with condition 2.3 or if no Incoterm is specified will be in accordance with FCA, Incoterms 2010 at Elta-UK Limited Fareham or Kingswinford facilities as appropriate.

5.3 For UK Orders, the Buyer shall collect the Goods from Elta-UK Limited' premises at Elta-UK Limited Fareham or Kingswinford facilities as appropriate or such other location as may be advised by Elta-UK Limited prior to delivery or, if agreed by Elta-UK Limited, Elta-UK Limited will deliver the Goods to some other place as agreed between the parties ("Delivery Location"). Collection or acceptance of delivery of the Goods by the Buyer must be made within three Business Days of Elta-UK Limited notifying the Buyer that the Goods are ready.

5.4 Unless otherwise agreed, delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

5.5 Unless otherwise agreed with Elta-UK Limited, Elta-UK Limited' carriers shall not be responsible for loading or off-loading of Goods at the Delivery Location.

5.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Elta-UK Limited shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide Elta-UK Limited with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.7 If Elta-UK Limited fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Elta-UK Limited shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide Elta-UK Limited with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.8 If the Buyer fails to take or accept delivery of the Goods within three Business Days of Elta-UK Limited notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Elta-UK Limited' failure to comply with its obligations under the Contract:

5.8.1 Delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Elta-UK Limited notified the Buyer that the Goods were ready;

5.8.2 Elta-UK Limited shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).

5.9 If ten Business Days after the day on which Elta-UK Limited notified the Buyer that the Goods were ready for delivery the Buyer has not taken or accepted delivery of them, Elta-UK Limited may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

5.10 If Elta-UK Limited delivers up to and including 5% more or less than the quantity of Goods ordered the Buyer may not reject them, but on receipt of notice from the Buyer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice, provided that Elta-UK Limited has received notice from the Buyer of such wrong quantity within forty-eight (48) hours of delivery of the Goods.

5.11 Elta-UK Limited may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

## 6. QUALITY OF GOODS

6.1 Elta-UK Limited warrants that on delivery and, unless otherwise confirmed by Elta-UK Limited in writing, for a period of 12 months from the date of delivery ("Warranty Period"), the Goods shall:

6.1.1 Conform in all material respects with the Goods Specification; and

6.1.2 Be free from material defects in design, material and workmanship.

6.2 Subject to clause 6.3, if:

6.2.1 The Buyer gives notice in writing to Elta-UK Limited during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;

6.2.2 Elta-UK Limited is given a reasonable opportunity of examining such Goods; and

6.2.3 The Buyer (if asked to do so by Elta-UK Limited) returns such Goods to Elta-UK Limited' place of business at the Buyer's cost together with a full record and proof of any servicing, maintenance, repairs, modifications or alterations carried out on the Goods during the Warranty Period.

Elta-UK Limited shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.3 Elta-UK Limited shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:

6.3.1 The Buyer makes any further use of such Goods after giving notice in accordance with clause 6.2;

6.3.2 The defect arises because the Buyer failed to follow Elta-UK Limited' oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

6.3.3 The defect arises as a result of Elta-UK Limited following any drawing, design or specification supplied by the Buyer;

6.3.4 The Buyer alters or repairs such Goods without the written consent of Elta-UK Limited;

6.3.5 The defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

6.3.6 The Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 Except as provided in this clause 6, Elta-UK Limited shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 These Conditions shall apply to any repaired or replacement Goods supplied by Elta-UK Limited.

## 7. FREE ISSUE MATERIALS

7.1 All Free Issue Materials shall be at the risk of the Buyer and insured by the Buyer at its own expense.

7.2 The Buyer shall indemnify Elta-UK Limited against any loss, damage, injury or expense whatsoever arising directly or indirectly from the supply or use of the Free Issue Materials, including, in connection with any claim made against Elta-UK Limited for actual or alleged infringement of a third party's intellectual property rights.

7.3 The Free Issue Materials shall be provided to Elta-UK Limited in good order and condition. Any Free Issue Materials that are defective or damaged due to bad workmanship or the fault of the Buyer shall be repaired or replaced at the Buyer's expense.

7.4 The Buyer shall be responsible to ensure that the Free Issue Materials are complete and accurate, of satisfactory quality and are fit for its purpose and shall indemnify Elta-UK Limited against any loss damage, injury or expenses whatsoever arising directly or indirectly from any fault in or incorrect specification of the said materials.

## 8. BUYER'S OBLIGATIONS

8.1 The Buyer shall:

8.1.1 Ensure that the terms of the Order and the Goods Specification and/or Scope of Works are complete and accurate;

8.1.2 Co-operate with Elta-UK Limited in all matters relating to the Services;

8.1.3 Have sole responsibility for seeking any necessary Approvals for any Goods, Services and/or Design & Application Advice before placing an Order with Elta-UK Limited and shall indemnify Elta-UK Limited against all and any costs Elta-UK Limited incurs as a result of the Buyer's failure to obtain the necessary Approvals;

8.1.4 Provide Elta-UK Limited, its employees, agents, consultants and subcontractors, with access to the Buyer's Premises as reasonably required by Elta-UK Limited to provide the Services;

8.1.5 Provide Elta-UK Limited with such information and materials as Elta-UK Limited may reasonably require to



supply the Services, and ensure that such information is accurate in all material respects;

8.1.6 Prepare the Buyer's Premises for the supply of the Services;

8.1.7 Obtain and maintain all necessary licences, permissions and consents which may be required for use of the Goods or the Services which shall be obtained before the date on which the Goods are to be used or Services are to start (as applicable);

8.1.8 Keep and maintain all materials, equipment, documents and other property of Elta-UK Limited ("Elta-UK Limited Materials") at the Buyer's Premises in safe custody at its own risk, maintain Elta-UK Limited Materials in good condition until returned to Elta-UK Limited, and not dispose of or use Elta-UK Limited Materials other than in accordance with Elta-UK Limited' written instructions or authorisation;

8.1.9 Not make any alteration to the Buyer's Premises, including the use of any of the same, in such a way that Elta-UK Limited' provision of the Services may be affected between the date of the quotation and the date of delivery of the Services;

8.1.10 Provide Elta-UK Limited with use of the power and lighting supply and other utilities at the Buyer's Premises in connection with its provision of the Services free of charge;

8.1.11 Provide Elta-UK Limited with all health and safety information and procedures from time to time in force at the Buyer's Premises; and

8.1.12 Comply with all applicable laws, statutes and regulations including in relation to anti-bribery and anti-corruption.

8.2 If Elta-UK Limited' performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("Buyer Default"):

8.2.1 Elta-UK Limited shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays Elta-UK Limited' performance of any of its obligations;

8.2.2 Elta-UK Limited shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from Elta-UK Limited' failure or delay to perform any of its obligations in respect of the Services; and

8.2.3 The Buyer shall reimburse Elta-UK Limited on written demand for any costs or losses sustained or incurred by Elta-UK Limited arising directly or indirectly from the Buyer Default.

## **9. INSPECTION AND TESTING**

9.1 The Goods will be, so far as is practicable, submitted to Elta-UK Limited' standard tests at Elta-UK Limited' premises prior to despatch.

9.2 If the Buyer requires alternative tests to those specified in Elta-UK Limited' quotation or if the Buyer or the Buyer's representatives request to be present during the testing and/or inspection, additional charges will apply and any agreed delivery date for the Goods shall be extended to include the time required to conduct such tests.

9.3 If, having requested to attend the testing and/or inspection of the Goods, the Buyer or its representative(s) fails to attend the tests and/or inspection, the testing and/or inspection will proceed in the Buyer or the Buyer's representatives' absence and shall be deemed to have been made in the Buyer or its representatives' presence.

9.4 All performance figures supplied by Elta-UK Limited relating to the Goods are based upon Elta-UK Limited' experience and represent the figures Elta-UK Limited expects to obtain in its laboratory to the relevant test standard applicable to the product type and, where applicable, confirmed within the Goods Specification.

## **10. TITLE AND RISK**

10.1 The risk in the Goods shall pass to the Buyer on completion of delivery as set out in clause 5.4.

10.2 Title to the Goods shall not pass to the Buyer until the earlier of:

10.2.1 Elta-UK Limited receives payment in full (in cash or cleared funds) for the Goods and any other goods that Elta-UK Limited has supplied to the Buyer; and

10.2.2 The Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 10.4.

10.3 Until title to the Goods has passed to the Buyer, the Buyer shall:

10.3.1 Store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as Elta-UK Limited' property;

10.3.2 Not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

10.3.3 Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

10.3.4 Notify Elta-UK Limited immediately if it becomes subject to any of the events listed in clause 13.3; and

10.3.5 Give Elta-UK Limited such information relating to the Goods as Elta-UK Limited may require from time to time.

10.4 Subject to clause 10.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Elta-UK Limited receives payment for the Goods. However, if the Buyer resells the Goods before that time:

10.4.1 It does so as principal and not as Elta-UK Limited' agent; and

10.4.2 Title to the Goods shall pass from Elta-UK Limited to the Buyer immediately before the time at which resale by the Buyer occurs.

10.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 13.3, then, without limiting any other right or remedy Elta-UK Limited may have:

10.5.1 The Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

10.5.2 Elta-UK Limited may at any time:

A Require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

B If the Buyer fails to do so promptly, enter any of the Buyer's Premises where the Goods are stored in order to recover them.

## 11. SUPPLY OF SERVICES

11.1 Elta-UK Limited shall provide the Services to the Buyer in accordance with the Scope of Works in all material respects.

11.2 Elta-UK Limited shall use all reasonable endeavours to meet any performance dates for the Services specified in Elta-UK Limited' quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

11.2 Elta-UK Limited shall have the right to make any changes to the Services which are necessary to comply with any applicable law or regulatory or safety requirement, or which do not materially affect the nature or quality of the Services, and Elta-UK Limited shall notify the Buyer in any such event.

11.3 Elta-UK Limited warrants that the Services shall conform in all material respects with the Scope of Works for a period of 12 months from the date of performance of

the Services. Where Elta-UK Limited is not the provider of the Services, Elta-UK Limited shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to Elta-UK Limited.

11.4 The terms implied by sections 13 to 15 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

11.5 Elta-UK Limited reserves the right to sub-contract any or all of its obligations in connection to the performance of the Services.

## 12. PRICE AND PAYMENT

12.1 The price of the Goods shall be the price set out in Elta-UK Limited' quotation, or, if no price is quoted, the price set out in Elta-UK Limited' published price list in force as at the date of delivery. The charges for Services shall be calculated in accordance with Elta-UK Limited' standard daily fee rates, as set out in Elta's quotation, unless otherwise agreed in the Scope of Work.

12.2 Elta-UK Limited reserves the right to increase its standard daily fee rates for the Services at any time before performance of the Services upon 14 days' notice to the Buyer.

12.3 Elta-UK Limited may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

12.3.1 Any factor beyond Elta-UK Limited' control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

12.3.2 Any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

12.3.3 Any delay caused by any instructions of the Buyer or failure of the Buyer to give Elta-UK Limited adequate or accurate information or instructions.

12.4 The price of the Goods and/or Services excludes:

12.4.1 The amounts in respect of value added tax (VAT), which the Buyer shall additionally be liable to pay to Elta-UK Limited at the prevailing rate, subject to the receipt of a valid VAT invoice; and

12.4.2 The costs and charges of non-standard packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer; and

12.4.3 Any expenses reasonably incurred by Elta-UK Limited in connection with the Services including travelling expenses, hotel costs, subsistence and any associated

expenses, and for the cost of services provided by third parties and required by Elta-UK Limited for the performance of the Services, and for the cost of any materials.

12.5 If Elta-UK Limited incurs any extra costs between the date of the quotation and the date of despatch of the Goods owing to delay in starting work or suspension of the work due to the Buyer's instructions or inadequacy or absence of instructions, rectification of errors in drawings or Goods Specification/Scope of Works provided by the Buyer, or any other cause for which the Buyer (or any other party employed by the Buyer) is responsible, Elta-UK Limited shall be entitled to charge the Buyer for those extra costs incurred.

12.6 Elta-UK Limited may invoice the Buyer for the Goods on or at any time after the completion of delivery. Unless as otherwise agreed in the Scope of Works, Elta-UK Limited may invoice the Buyer for the Services at the end of each month in which the relevant Services are performed.

12.7 Subject to any special payment terms agreed in writing between the Buyer and Elta-UK Limited, the Buyer shall pay the invoice in full and in cleared funds within 30 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Elta-UK Limited. Time of payment is of the essence.

12.8 If the Buyer fails to make any payment due to Elta-UK Limited under the Contract by the due date for payment, then Elta-UK Limited shall be entitled to:

12.8.1 Cancel the Contract or suspend any further deliveries to the Buyer;

12.8.2 Appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and Elta-UK Limited) as Elta-UK Limited may think fit (notwithstanding any purported appropriation by the Buyer); and/or

12.8.3 Charge the Buyer interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

12.9 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Elta-UK Limited may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by Elta-UK Limited to the Buyer.

## **13. TERM; TERMINATION**

13.1 Unless as otherwise as agreed in the Scope of Services, the duration of the Services shall be as stated in Elta-UK Limited' quotation.

13.2 Without affecting any right or remedy available to it, unless as otherwise as agreed in the Scope of Services, either party may terminate the Services by giving the other party not less than [thirty (30) days]' written notice.

13.3 Without limiting its other rights or remedies, Elta-UK Limited may terminate this Contract with immediate effect by giving written notice to the Buyer if:

13.3.1 The Buyer fails to pay any amount due under this agreement on the due date for payment and remains in default for more than fourteen (14) days;

13.3.2 The Buyer commits a material breach of any term of this agreement and (if that breach is remediable) fails to remedy that breach within thirty (30) days of that party being required in writing to do so;

13.3.3 An order is made or a resolution is passed for the winding up of the Buyer, or an order is made for the appointment of an administrator to manage the affairs, business and property of the Buyer, or such an administrator is appointed, or a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court or a creditor to appoint a receiver or manager or which entitle a court to make a winding-up order, or the Buyer takes or suffers any similar or analogous action in consequence of debt, or an arrangement or composition is made by the Buyer with its creditors or an application to a court for protection from its creditors is made by the Buyer; or

13.3.4 Any Force Majeure Event prevents the other party from performing its obligations under this agreement for any continuous period of six (6) months;

13.3.5 The Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

13.3.6 The Buyer's financial position deteriorates to such an extent that in Elta-UK Limited' opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

13.3.7 The Buyer purports to assign or otherwise transfer its rights or obligations under this agreement in breach of clause 17.1

13.4 Without limiting its other rights or remedies, Elta-UK Limited may suspend provision of the Goods or the Services under the Contract or any other contract between the Buyer and Elta-UK Limited if the Buyer becomes subject to any of the events listed in clause 13.3.1 to clause 13.3.6, or Elta-UK Limited reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.



13.5 Without limiting its other rights or remedies, Elta-UK Limited may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

13.6 On termination of the Contract for any reason the Buyer shall immediately pay to Elta-UK Limited all of Elta-UK Limited' outstanding unpaid invoices and interest.

13.7 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

13.8 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 14. LIMITATION OF LIABILITY

14.1 Nothing in these Conditions shall limit or exclude Elta-UK Limited' liability for:

14.1.1 Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

14.1.2 Fraud or fraudulent misrepresentation; or

14.1.3 Any matter in respect of which it would be unlawful for Elta-UK Limited to exclude or restrict liability.

14.2 Subject to clause 14.1

14.2.1 Elta-UK Limited shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of production, inability to occupy or delay in the ability to occupy any of the Buyer's Premises (by humans or livestock) in which the Goods are installed or are to be installed or the Services are to be provided, or any indirect or consequential loss arising under or in connection with the Contract; and

14.2.2 Elta-UK Limited' total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid by the Buyer for the Goods and Services under this Contract.

## 15. DATA PROTECTION

15.1 The Buyer and Elta-UK Limited acknowledge that for the purposes of the Data Protection Act 1998, the Buyer is the Data Controller and Elta-UK Limited is the data processor in respect of any Personal Data.

15.2 Elta-UK Limited shall process the Personal Data only in accordance with the Buyer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Buyer.

15.3 Elta-UK Limited shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

15.4 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

15.5 Elta-UK Limited warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:

15.5.1 Take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

**A** The harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

**B** The nature of the data to be protected; and

15.5.2 Take reasonable steps to ensure compliance with those measures.

15.6 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 15.

15.7 The Buyer acknowledges that Elta-UK Limited is reliant on the Buyer for direction as to the extent to which Elta-UK Limited is entitled to use and process the Personal Data. Consequently, Elta-UK Limited will not be liable for any claim brought by a Data Subject arising from any action or omission by Elta-UK Limited, to the extent that such action or omission resulted directly from the Buyer's instructions.

15.8 Elta-UK Limited may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:

15.8.1 Is on terms which are substantially the same as those set out in this agreement; and

15.8.2 Terminates automatically on termination of this agreement for any reason.

## 16. FORCE MAJEURE

16.1 A party shall be deemed not to be in default with respect to non-performance of any of its obligations under this agreement, if and so long as such non-performance is due in whole or in some material way to an event of Force Majeure and that party has used its commercially reasonable efforts to mitigate the effects of the event of Force Majeure and to perform its obligations under the agreement. If an event of Force Majeure occurs, the party affected shall promptly notify the other party of the occurrence of the event, its extent and probable duration and shall use its best endeavours to overcome the difficulties created thereby and to resume performance of its obligations as soon as practicable.

## 17. GENERAL

17.1 Assignment and other dealings

17.1.1 Elta-UK Limited may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.1.2 The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Elta-UK Limited.

17.2 Confidentiality

17.2.1 Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination of this agreement, disclose to any person any Confidential Information, except as permitted by clause 17.2.2

17.2.2 Each party may disclose the other party's confidential information:

**A** To its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or

advisers to whom it discloses the other party's confidential information comply with this clause 17.2; and

**B** As may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.2.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

17.2.4 The obligations contained in this clause 17.2 shall not apply to any Confidential Information which:

**A** Is publicly known at the time of disclosure to the receiving party; or

**B** Becomes publicly known otherwise than through a breach of this agreement by the receiving party, its officers, employees, agents or contractors; or

**C** Can be proved by the receiving party to have reached it otherwise than by being communicated by the other party including:

- i. Being known to it prior to disclosure; or
- ii. Having been developed by or for it wholly independently of the other party; or
- iii. Having been obtained from a third party without any restriction on disclosure on such third party of which the recipient is aware, having made due enquiry.

17.2.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement.

17.3 Entire agreement

17.3.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

17.4 Variation No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17.5 Waiver A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

17.5.1 Waive that or any other right or remedy; nor

17.5.2 Prevent or restrict the further exercise of that or any other right or remedy.

17.6 Severance If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

#### 17.7 Notices

17.7.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

17.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.7.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

17.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17.8 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

17.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

17.10 **Jurisdiction.** 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 Contract or its subject matter or formation.

# ELTA-NI LIMITED

## 1. INTERPRETATION

### 1.1 In these Conditions:

'Buyer' means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller; 'Goods' means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

'Seller' means Elta-NI Limited whose registered office is at 2, Greenway, Conlig, Newtownards, BT23 7SU or any other subsidiary or associated company;

'Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing and signed by authorised representatives of the Buyer and the Seller.

'Contract' means the contract for the purchase and sale of the Goods;

'Writing' includes facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 No variation or alteration of these Conditions will be binding on the parties unless agreed in Writing between the Seller and the Buyer.

## 2. BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller subject in any case to these Conditions. For the avoidance of doubt, these Conditions shall govern the Contract to the exclusion of any other terms and conditions put forward by the Buyer.

2.2 The Seller shall not be bound by any representations made by its agents or employees unless such representation is confirmed in Writing by the Seller and signed by an authorised representative of the Seller.

2.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller and signed by an authorised representative of the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 The Seller shall be entitled to correct any typographical, clerical or other error or omission in any sales literature, quotation, acceptance of offer, invoice or other document without any liability.

## 3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing or verbally by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specifications) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with specifications submitted by the Buyer, the Buyer shall indemnify the Seller against all losses, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

3.7 Orders are accepted and Goods are delivered subject to availability and the Seller accepts no responsibility and shall not be liable in any way to the Buyer if the Goods ordered are unavailable. In the event of any of the Goods ordered being unavailable, the Seller reserves the right to supply at its absolute discretion Goods which are similar in nature and quality to the unavailable Goods.

## 4. PRICE OF THE GOODS

4.1 The price of the Goods shall be the Seller's list price (unless otherwise notified in Writing to the Buyer by the Seller). All prices quoted are valid for ninety (90) days only after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable Value Added Tax, which the Buyer shall be additionally liable to pay to the Seller.

## 5. TERMS OF PAYMENT

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the total amount due in respect of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the total amount due at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the total amount due in respect of the Goods (without any deduction, set off or counter claim) within sixty (60) days from the end of the month of the Seller's invoice (unless otherwise agreed in Writing by the Seller), and the Seller shall be entitled to recover the total amount due, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the total amount due shall be of the essence of the Contract.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy

available to the Seller, the Seller shall be entitled to:

5.3.1 Cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 Appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 Charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the annual rate of 4 % above the prevailing GBP rate from the date of invoice to the date of payment of such (a part of a month being treated as a full month for the purpose of calculating interest). Interest shall accrue notwithstanding termination of this Contract for whatever reason.

## 6. DELIVERY

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If it shall be found that there is any discrepancy in quantity of the Goods delivered from the quantity ordered, the Seller shall only be liable for any shortfall providing notice has been given in writing within forty eight (48) hours of delivery.

6.5 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.6.1 Store the Goods until actual delivery and charge the



Buyer for the reasonable costs (including insurance) of storage; or

6.6.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## **7. RISK AND PROPERTY**

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment of the total amount due in respect of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

## **8. RETURNS**

8.1 All goods to be returned must get prior clearance from the Seller. All goods returned must be accompanied with the relevant paper work.

8.2 Goods that are returned due to a fault, will not be charged a rehandling charge.

8.3 Goods returned due to the Buyer no longer requiring them will be charged a rehandling charge of 20%. Goods which have been manufactured to your requirements i.e. non stock cannot be returned for credit.

## **9. WARRANTIES AND LIABILITY**

9.1 THE SELLER SHALL TAKE REASONABLE STEPS TO ENSURE THAT THE GOODS ARE FREE FROM DEFECTS AND OF GOOD QUALITY AND, SUBJECT TO THE FOLLOWING PROVISIONS OF THIS CLAUSE 8, GOODS SUPPLIED BY THE SELLER SHALL BE GUARANTEED IN RESPECT OF DEFECTS IN THE GOODS ARISING AS A RESULT OF FAULTY MATERIALS OR WORKMANSHIP FOR A PERIOD OF TWELVE (12) MONTHS FROM THE DATE OF DESPATCH OF THE GOODS TO THE BUYER. TO MAKE A CLAIM UNDER THE GUARANTEE SET OUT IN THIS CLAUSE 8.1, THE BUYER SHALL RETURN THE GOODS, CARRIAGE PAID, TO THE SELLER.

## **10. GENERAL**

10.1 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.



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