



## PROTEC CAMERFIELD LIMITED TERMS AND CONDITIONS OF SALE AND SUPPLY

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation in this clause apply in these Terms and Conditions:

<b>"Agreement"</b>	the contract for the supply of Goods and/or Services comprising these Terms and Conditions together with the relevant Schedule(s), the Order and the Written Acceptance, to be construed in accordance with clause 30.
<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>"CDPA"</b>	the Copyright Designs and Patents Act 1988 as the same may be amended, extended or re-enacted from time to time.
<b>"Client"</b>	the person, firm or company who has requested the Supplier to provide Goods and/or Services or with whom the Supplier contracts for the provision of Goods and/or Services.
<b>"Client Default"</b>	has the meaning given to it in clause 11.2.
<b>"Commissioning Works"</b>	the work necessary to confirm Goods installed under the Agreement are ready to commence normal operation, to be carried out by the Supplier's commissioning engineer.
<b>"Data Protection Legislation"</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
<b>"Goods"</b>	the apparatus, materials or equipment (including any part thereof) which the Supplier agrees in writing to supply to or to the order of the Client as described in the Order and/or the Written Acceptance.
<b>"Group"</b>	shall mean, in respect of either the Client of the Supplier, that party's group composed of that party, its holding company (if any), and all subsidiary companies of that party and of that party's holding company (if any), within the meaning of section 1159 of the Companies Act 2006 (as amended).
<b>"Group Company"</b>	any company in the Supplier's Group.

<b>"Intellectual Property Rights"</b>	patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including Know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>"Know-how"</b>	all inventions, discoveries, improvements and processes (whether patentable or non-patentable), copyright works (including without limitation computer programs), designs (whether or not registered or registrable) and all other technical information of whatever nature).
<b>"Order"</b>	the Client's order or request for the supply of Goods and/or Services.
<b>"Price List"</b>	the Supplier's list of prices for goods and/or services published from time to time, or issued to the Client in connection with an Order.
<b>"Schedule"</b>	the relevant Schedule(s) available on <a href="https://www.protec.co.uk/terms/">https://www.protec.co.uk/terms/</a> or as specified in the Written Acceptance or as applicable to the Supplier identified in the Written Acceptance.
<b>"Services"</b>	the services which the Supplier agrees in writing to supply to or to the order of the Client as set out in the Order and/or the Written Acceptance.
<b>"Specification"</b>	any specification for the Goods and/or Services as set out in an Order or as otherwise agreed between the parties in writing.
<b>"Supplier"</b>	the Supplier specified in the Schedule.
<b>"Supplier Materials"</b>	all materials, equipment, documents and other property of the Supplier.
<b>"Terms and Conditions"</b>	these terms and conditions of sale and supply as amended and supplemented by the relevant Schedule and the Written Acceptance.
<b>"UK Data Protection Legislation"</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
<b>"Working Hours"</b>	means 7.5 hours between 08.00 hours and 17.30 hours on any Business Day.
<b>"Written Acceptance"</b>	means the Supplier's written acceptance of the Order, which shall specify the identity of the Supplier and/or the relevant Schedule(s) applying to the Order.

- 1.2 Any capitalised term that is not defined in this clause 1 shall have the definition allocated to it in the relevant Schedule(s).
- 1.3 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms and Conditions.
- 1.4 A person includes a natural person, corporate or unincorporated body. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted from time to time.
- 1.6 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.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.8 The Agreement shall be binding on, and enure to the benefit of, the parties to the Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- 1.10 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to writing or written includes emails.
- 1.12 All of these Terms and Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## **2. GENERAL AND BASIS OF AGREEMENT**

- 2.1 The Supplier sells its Goods and/or provides its Services in accordance with the Terms and Conditions, which shall apply to every such sale and supply, except to the extent stated in the Written Acceptance and/or as varied in writing by a Director of the Supplier, and to the exclusion of any conflicting terms and conditions submitted by the Client.
- 2.2 The Order constitutes an offer by the Client to purchase Goods and/or Services in accordance with these Terms and Conditions.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a Written Acceptance at which point and on which date the Agreement shall come into existence.
- 2.4 These Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

## **3. WARRANTY AND LIMITATION OF LIABILITY**

- 3.1 All Goods manufactured by the Supplier are examined and tested before leaving its premises. The Supplier, therefore, gives the following warranty (the "**Warranty**") which (to the fullest extent permitted by

law) supersedes and is in substitution for any conditions or warranty implied by statute, common law or otherwise in relation to the quality, condition or specification of the Goods, or any remedy for their breach:

- 3.1.1 If, within twelve months from the date of completion of the Commissioning Works for the Goods, any defect or fault is discovered in any Goods manufactured by the Supplier, due, in the Supplier's sole opinion (acting reasonably), to any defect in materials and/or workmanship, the Supplier warrants to the Client that it will make good the defect by, at its discretion, repair or replacement, without charge to the Client provided that notice is given to the Supplier by the Client as soon as is reasonably practicable following the Client's discovery of, or the date on which the Client ought reasonably to have discovered, any defect and the defective Goods or parts thereof are forwarded to the Supplier, carriage paid and suitably packed. Where the Supplier complies with its warranty under this clause the Supplier shall have no further liability to the Client in respect of the defect or defects concerned.
- 3.1.2 If the Goods are not commissioned by the Supplier, then the Warranty period stated in clause 3.1.1 is deemed to be 12 months from the date the Goods were despatched by the Supplier to the Client.
- 3.2 It is a condition of this Warranty that the Client shall notify the Supplier in writing as soon as is reasonably practicable after the Client became, or ought reasonably to have become, aware of the defect having occurred. A notice from the Client must be in writing and must identify in reasonable detail the matter the Client considers to be a defect and the basis on which the Client considers the matter to be a defect. A notice complying with this clause 3.2 is a condition precedent to any liability arising on the part of the Supplier in connection with any defect in the Goods.
- 3.3 The Warranty does not apply to defects arising from or in connection with any of the following:
  - 3.3.1 the Client making further use of the Goods after giving notice in accordance with clause 3.1.2;
  - 3.3.2 ordinary wear and tear, misuse, neglect, abnormal storage;
  - 3.3.3 failure to follow the Supplier's instructions (whether oral or in writing) as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 3.3.4 alteration or repair of the Goods without the Supplier's prior written approval;
  - 3.3.5 abnormal working conditions, or willful damage, or from circumstances over which the Supplier has no control;
  - 3.3.6 any drawing, design or Specification supplied by the Client; or
  - 3.3.7 the Goods differing from their description as a result of changes to ensure they comply with applicable statutory or regulatory standards.
- 3.4 The Supplier's responsibility in the case of any defect in the Goods is limited to the cost of making good such defect in its workshops, or, at its discretion replacing the affected Goods or parts thereof, in accordance with the terms of the Warranty.
- 3.5 In the case of Goods which are not of the Supplier's manufacture, the Supplier will pass on only those terms of warranty or guarantee passed to it by the manufacturer of such Goods, if any, and to the extent legally assignable or transferable.

- 3.6 Where Goods supplied under the Agreement are not installed by the Supplier, the Client shall, upon their installation by the Client or by the ultimate user and before the Goods are used, be responsible for carrying out appropriate testing and commissioning activities to ensure that they are installed correctly and in working order. In the case of installation by the Client, the Client shall keep records of such tests on an appropriate test report as prescribed by applicable law, the relevant British standards and/or recommended by the Supplier or the manufacturer of the Goods. In the case of installation by an end user who is not the Client, the Client shall ensure as far as possible that such records are kept by the end user. The Supplier shall not be liable for any defects or damage arising out of incorrect installation or bad workmanship by any party other than itself.
- 3.7 The Warranty shall only apply from the date on which the Supplier has completed the Commissioning Works in respect of the Goods (except where clause 3.1.2 applies or to the extent that the Goods constitute electrical apparatus that is not digitally signaled).
- 3.8 It is a condition of the Warranty that the Goods shall have been serviced and used in accordance with the manufacturer's and/or Supplier's recommendations, including as set out in instructions or any manuals relating to the same including (without limitation) those identified in the Schedule, and that any software relating to the Goods is updated in line with clause 19.
- 3.9 The terms of the Agreement shall apply to any repaired or replacement Goods supplied by the Supplier to the Client pursuant to the Warranty, save that the duration of the Warranty shall not be extended beyond the 12 month period referred to in clause 3.1.
- 3.10 Payment in full is a condition precedent to any liability on the Supplier arising under the Agreement. Without prejudice to the generality of the foregoing, the Supplier shall be under no liability under the Warranty (or any other warranty, condition or guarantee) or under the Agreement if the total price for the Goods and/or Services has not been paid by the final date for payment.
- 3.11 Save as expressly provided otherwise in the Agreement, all warranties, conditions or other terms implied by statute, common law, trade custom, practice or course of dealing are excluded to the fullest extent permitted by law.
- 3.12 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures or website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Agreement nor be legally binding.
- 3.13 Subject to clause 3.16, the Supplier shall not be liable for any loss of profit (whether direct or indirect), loss of opportunity, loss of sales or business, loss of contract, loss of anticipated savings, loss of or damage to goodwill or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Supplier, its employees or agents or otherwise) which may arise out of or in connection with any failure by the Supplier to comply with its obligations under the Agreement, the supply of the Goods and/or Services (including any delay in supplying or any failure to supply the Goods and/or Services in accordance with the Agreement or at all) or their use by the Client.
- 3.14 Subject to clause 3.16, the entire liability of the Supplier under or in connection with the Agreement shall not exceed the sums paid by the Client to the Supplier under the Agreement in respect of the Goods and/or Services supplied to the Client. This limit shall apply however that liability arises, including (without limitation) a liability arising by breach of contract, arising by tort (including negligence) or arising by breach of statutory duty.

- 3.15 Subject to clause 3.16, without prejudice and subject to any provision of the Agreement where liability is excluded to a lesser amount, and regardless of anything to the contrary contained in the Agreement, the Supplier's liability for any claim relating to Services supplied under or in connection with the Agreement shall not exceed the amount, if any, recoverable by the Supplier by way of indemnity against the claim in question under the Supplier's professional indemnity insurance or product liability insurance (as applicable) in force at the time that the claim or (if earlier) circumstances that may give rise to the claim is or are reported to the insurers in question.
- 3.16 Nothing in the Terms and Conditions and/or Agreement limits any liability which cannot legally be limited, including liability for:
- 3.16.1 death or personal injury caused by negligence;
  - 3.16.2 fraud or fraudulent misrepresentation; and
  - 3.16.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 3.17 The Supplier shall have no liability to any person other than the Client in respect of any Goods or Services supplied under the Agreement.
- 3.18 The Supplier shall not be liable to the Client or be deemed to be in breach of the Agreement by reason of any delay and/or hindrance in performing, or any failure to perform, any of the Supplier's obligations in relation to the Goods and/or Services, if the delay, hindrance or failure was due to any cause beyond the Supplier's reasonable control or a Client Default, or the Client's failure to supply delivery or other necessary instructions, or other fault of the Client (any cause falling within the scope of this clause 3.18 being a "**Force Majeure Event**"). Without limiting the foregoing, the following shall be regarded, without limitation, as causes beyond the Supplier's reasonable control:
- 3.18.1 Act of God, explosion, flood, tempest, fire, epidemic, pandemic or accident;
  - 3.18.2 war or threat of war, act of terrorism, sabotage, insurrection, civil disturbance or requisition;
  - 3.18.3 acts, restrictions, guidance, regulations, bye-laws, prohibitions or measures or directions of any kind on the part of any governmental, parliamentary or local authority;
  - 3.18.4 any local, national or international import or export regulations/controls or embargoes or any international sanctions to include any prohibition or restriction under the United Nations resolutions or the trade or economic sanctions, laws, or regulations of the European Union, United Kingdom or the United States of America imposed against the Client and/or any person connected to the Client and/or the country, region or other geographical area where the Goods are to be delivered or installed or operated or where the Client is domiciled or any situation where any performance of the Agreement may expose the Supplier to a risk of a sanction as described in this clause (in such circumstances, the Client shall indemnify the Supplier for the costs of making any application for authorization and approval to the relevant competent body);
  - 3.18.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or a third party);
  - 3.18.6 difficulties in obtaining raw materials, labour, fuel, parts, or machinery;
  - 3.18.7 default by the Supplier's supplier;

3.18.8 power failure or breakdown in machinery; or

3.18.9 exhaustion of stock.

3.19 Without prejudice to any other rights or remedies that the Supplier may have, subject to clause 3.20, the Supplier shall have the right, without liability to the Client, to terminate the Agreement with immediate effect by giving notice to the Client if a Force Majeure Event continues for a period of 14 days or more.

3.20 Without prejudice to any other rights or remedies that the Supplier may have, the Supplier shall have the right, without liability to the Client, to terminate the Agreement with immediate effect by giving notice to the Client if a Force Majeure Event of a type described in clause 3.18.4 occurs.

#### **4. DELIVERY, CARRIAGE AND PACKING**

4.1 The Supplier shall deliver the Goods to the location set out in the Order or the Written Acceptance, or such other location as the parties may agree (the "**Delivery Location**").

4.2 Save where otherwise set out in writing, carriage and packing will be included in the price of the Goods on orders of value in excess of £400.00. This value will be subject to annual review by the Supplier. The Client shall be liable to pay the Supplier's full costs for transport, packaging and insurance in all other cases.

4.3 All orders will normally be consigned by road or rail carriage paid at goods rates for an estimated three day delivery. The Supplier is free to use the most economical means of delivering the goods. For goods valued at £20 or less the Supplier may use the Royal Mail for which no proof of delivery will be available.

4.4 Delivery of Goods shall be made to the Delivery Location and the point of delivery shall be the nearest suitable and reasonable off load point for the appropriate vehicle use. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.5 Any dates quoted for delivery of the Goods are approximate only, and time for delivery is not of the essence.

4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, Client Default or the Client's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.7 Except where otherwise stated in a Schedule, when Goods are dispatched by courier, passenger-train or other special carrier at the Client's request, or in accordance with any other special instructions of the Client, any costs of such carriage incurred by the Supplier will be charged on invoice to the Client irrespective of the value of the Order. The Supplier will use its reasonable endeavors to meet any special request for early special delivery but accepts no liability whatsoever in this respect.

4.8 The Supplier shall replace or repair free of charge any Goods lost or damaged in transit (unless stated in writing that the Goods are not at the Supplier's risk during transit) provided both the carrier and the Supplier are advised in writing (otherwise than upon carrier's documents) within seven days of issue of advice note or invoice in case of non-delivery or within three days of delivery in case of damaged Goods.

- 4.9 If the Client fails to supply adequate delivery instructions within three Business Days of the Supplier notifying the Client that the Goods are ready, or if the Client otherwise fails to take delivery of the Goods, then except where such failure or delay is caused by a Force Majeure Event (excluding Client Defaults) or by the Supplier's failure to comply with its obligations under the Agreement in respect of the Goods:
- 4.9.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Client that the Goods were ready for dispatch; and
  - 4.9.2 the Supplier shall, subject to clause 4.10, store the Goods until delivery takes place, and charge the Client for all related costs and expenses (including in respect of insurance).
- 4.10 If within ten Business Days after the day on which the Supplier notifies the Client that the Goods are ready for dispatch the Client has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods without liability to the Client. The Client shall be liable to pay in full for all Goods ordered under the terms of the Agreement, and to indemnify the Supplier against all storage and other related costs (including any costs of resale or disposal), save that the Client shall be relieved from such liability, and entitled to reimbursement of sums paid to the Supplier, to the extent the Supplier sells the Goods to a third party, and such relief from liability and/or indemnity shall be commensurate with any sums received by the Supplier in connection with such sales (which may be for a lower price than that agreed with the Client).
- 4.11 The Supplier 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 Client to cancel any other instalment.

## **5. PRICES**

- 5.1 The Supplier's prices for Goods and/or Services are set out in the Price List and are subject to change without notice.
- 5.2 Subject to clause 5.5, the actual price to be paid for the Goods will be calculated in accordance with the list prices current at the time of dispatch as set out in the Price List plus any costs for carriage, packing and insurance which are payable in accordance with clause 4).
- 5.3 Subject to clause 5.5, unless otherwise agreed between the parties in writing, the fee for the Services shall be calculated on a time cost basis as follows:
- 5.3.1 the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in its current Price List at the date that the Services are provided;
  - 5.3.2 the Supplier's daily fee rates for each individual person are calculated on the basis of Working Hours worked on Business Days;
  - 5.3.3 the Supplier shall be entitled to charge an overtime rate as set out in the Price List or for any time worked by individuals engaged in performing the Services outside normal Working Hours;
  - 5.3.4 the Supplier shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Supplier engages 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 the Supplier for the performance of the Services, and for the cost of any materials.



- 5.4 All prices and other charges payable hereunder are exclusive of Value Added Tax, which shall be payable by the Client at the applicable rate.
- 5.5 The Supplier reserves the right, by giving written notice to the Client at any time before delivery, to adjust the Price List and to:
- 5.5.1 increase the charges for the Services, generally on an annual basis with effect from each anniversary of the commencement date of the Agreement, in line with any percentage increase in the Retail Prices Index in the preceding 12 month period;
- 5.5.2 increase the price of Goods to reflect any increase in the cost to the Supplier which is due to:
- a) any factor beyond the control of the Supplier (such as, without limitation, any change in relevant legislation, foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture, including due to the UK's exit from the European Union); or
  - b) any change in delivery dates, quantities or types of goods order or Specification for the Goods which are requested by the Client; or
  - c) any delay caused by a Client Default or any instructions of the Client or failure of the Client to give the Supplier adequate information or instructions; or
  - d) Brexit (as defined in clause 21.1.2).
- 5.6 Unless the contrary is agreed separately in writing between the Client and the Supplier (at the Supplier's sole absolute discretion), the Client is not entitled to withhold any retention under this Agreement. Where it is agreed separately in the Written Acceptance that retention will be withheld, this shall be subject to the following rules:
- 5.6.1 the retention amount will be 3% (unless otherwise agreed in the Written Acceptance); and
- 5.6.2 the Client's interest in the retention is fiduciary as trustee for the Supplier; and
- 5.6.3 the Client shall, if the Supplier so requests, place the retention in a separate bank account and notify the Supplier that the amount has been so placed; and
- 5.6.4 the Client shall be entitled to the full beneficial interest in any interest accruing on the separate bank account and will be under no duty to account for any such interest to the Supplier; and
- 5.6.5 the whole retention must be released within 30 days of the Supplier providing the Goods and/or Services.
- 5.7 Any quotations for the Goods and/or Services provided by the Supplier are valid for a period of ninety (30) days.

## **6. CREDIT**

6.1 Any Order is accepted subject to the Supplier being satisfied (in its absolute discretion) with the Client's credit standing and/or that of its key personnel, directors, representatives, or individual partners ("Key Individuals") as determined by the Supplier in its sole discretion. Without prejudice to the generality of clause 20 and notwithstanding clause 13.10, the Client hereby acknowledges and agrees that the Supplier may share information provided by or on behalf of the Client about it or any Key Individual with the Supplier's bankers/financiers and credit reference agencies in connection with credit checking at any time until full payment is made in accordance with the Agreement, including, without limitation, for the following purposes:

6.1.1 obtaining credit insurance;

6.1.2 making credit reference agency searches;

6.1.3 credit control;

6.1.4 assessment and analysis (including credit scoring, market, product and statistical analysis);

6.1.5 securitisation; and/or

6.1.6 protecting the Supplier's interests.

The Supplier may also process, retain and use the information referred to above for the purposes of generally running the Client's account and providing the Goods and/or Services.

6.2 The Supplier may in its absolute discretion at any time require payment of the price in whole or in part, whether before accepting an Order, before taking any steps to fulfil an Order or before making delivery of any Goods to, or performing any Services for, the Client. Receipt of such payment by the Supplier shall be a condition precedent to any further obligations on the part of the Supplier arising under the Agreement.

6.3 The Supplier shall only deliver Goods or Services to the Client after satisfactory credit approval has been received by the Supplier or pro-forma payment has been received in cash or cleared funds in accordance with this clause 6. If neither a satisfactory credit approval has been received nor pro-forma payment has been received in cash or cleared funds in accordance with this clause 6.3 then the Supplier shall have the right to terminate the Agreement with immediate effect by serving notice on the Client.

6.4 Without prejudice to any other rights or remedies that the Supplier may have under the Agreement (including, without limitation, under clause 6.2), if the Supplier, at its sole discretion, at any time considers that the economic and financial standing of the Client has deteriorated, or is likely to deteriorate, then the Supplier may vary the final date for payment of monies due from the Client stipulated in clause 7.1 and/or any other payment terms agreed between the parties by giving written notice to the Client to that effect.

## **7. PAYMENT**

7.1 Unless otherwise stated in writing by the Supplier and/or where clause 6.2 applies, the due date for payment shall be the date of the invoice stated on the Supplier's invoice for any Goods and/or Services supplied or to be supplied ("Due Date"). Except where clause 6.2 applies, the final date for payment shall be thirty (30) days after the Due Date.

- 7.2 The Client shall pay invoices in full and in cleared funds. Payment shall be made to the bank account nominated in writing by the Supplier. The Supplier shall be entitled to invoice the amounts due for each Order in advance, notwithstanding that Services may not have been carried out or completed and/or that delivery of Goods may not have taken place and/or property in the Goods passed to the Client. The time of payment of each invoice shall be of the essence of the Agreement.
- 7.3 The Supplier may invoice for Goods and Services together or separately. The Supplier may invoice in respect of Services at periodic intervals, no more frequently than once every 14 days, until issuing a final invoice following completion of the Services.
- 7.4 Any quoted discount shall be void and of no effect unless payment is made strictly in accordance with the Agreement.
- 7.5 Should payment not be made by the final date for payment in accordance with this clause 7 then, without limiting the Supplier's other remedies under the Agreement or otherwise at law, the Client shall pay interest on the overdue amount at four per cent per annum over Barclays Bank plc Base Rate from time to time. This interest shall accrue on a daily basis from the final date for payment until actual payment of the overdue amount (whether before or after judgment). The Client shall pay the interest together with the overdue amount. The Supplier reserves the right to charge the Client for any costs in obtaining payment of monies overdue, which may include but are not limited to professional fees, solicitors' fees, court costs, employment of a collection agency, bailiffs etc. Interest shall also apply in accordance with the foregoing to the cost to the Supplier of collection of the monies due.

## **8. TERMINATION, SUSPENSION OR CANCELLATION OF DELIVERY**

- 8.1 The Supplier reserves the right to:
- 8.1.1 suspend, delay or cancel the delivery of some or all the Goods and/or Services pursuant to an Order and/or Written Acceptance; or
  - 8.1.2 require advance payment for some or all the Goods and/or Services pursuant to an Order (as a condition precedent to further performance under the Agreement); or
  - 8.1.3 suspend some or all of its obligations under this Agreement if the Client fails to pay any amount due under this Agreement by the final date for payment; or
  - 8.1.4 terminate this Agreement, with immediate effect by giving the Client written notice if the Client:
    - a) is or reasonably appears unable to pay its debts (to the Supplier or others);
    - b) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
    - c) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;

- d) suffers any deterioration in its financial position such that in the Supplier's opinion the Client's capability to fulfil its obligations under the Agreement is placed in jeopardy;
- e) fails to pay any amount due under this Agreement by the final date for payment or is otherwise in material breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of the Client being notified in writing to do so; or
- f) has a change of control, within the meaning given to that term in section 1124 of the Corporation Tax Act 2010,

which rights shall be in addition to any other rights or remedies the Supplier may have against the Client under the Agreement or otherwise at law.

- 8.2 The Supplier shall further be entitled to cancel the Client's order by written notice to the Client and without liability to the Client in the event of any change or Force Majeure Event (after acceptance by the Supplier of such Order) which affects the Supplier's ability to comply with the Agreement (including without limitation where the change or Force Majeure Event results in increased costs to the Supplier).
- 8.3 The Supplier shall be entitled to postpone any Commissioning Works until full payment for the relevant Goods and/or Services has been received by the Supplier, in accordance with the Agreement.
- 8.4 The Supplier shall be entitled to postpone the issue of any certification, manual, drawings or the like until full payment has been received by the Supplier, in accordance with the Agreement.
- 8.5 Cancellation of any Order by the Client shall be permitted by express written agreement of the Supplier only. In the event of any such cancellation the Client shall indemnify the Supplier in full against all loss (including loss of profit and consequential losses), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.
- 8.6 The Supplier shall have no liability to the Client in respect of any loss, expense, liability, penalty or other costs the Client may incur in connection with the Supplier's exercise of its rights under this clause 8.
- 8.7 On termination of the Agreement:
  - 8.7.1 the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt; and
  - 8.7.2 the Client shall return to the Supplier all of the Supplier Materials and any Goods which have not been fully paid for, failing which the Supplier may enter the Client's premises or any location where the Goods or Supplier Materials are stored and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and insurance against loss or damage, and will not use them for any purpose.

## **9. FITNESS FOR PURPOSE**

- 9.1 The Client must satisfy itself that the Goods ordered and supplied are fit for its purpose, as this is not guaranteed or warranted by the Supplier, and all warranties as to fitness for purpose save those expressly set out in the Agreement are hereby excluded to the fullest extent permitted by law.

## **10. PASSING OF PROPERTY AND RISK**

- 10.1 Title to the Goods shall not pass to the Client until the Supplier receives payment in full (in cash or cleared funds) for the Goods and Services and any other goods or services that the Supplier has supplied to the Client in respect of which payment has become due, in which case title to the Goods shall pass at the time of receipt of payment of all such sums.
- 10.2 Notwithstanding that title in the Goods may remain with the Supplier in accordance with clause 10.1, risk in the Goods passes to the Client on delivery or, where the Client wrongfully fails to take delivery of the Goods, upon the Supplier's tendering delivery.
- 10.3 Upon delivery of the Goods or, where the Client wrongfully fails to take delivery of the Goods, upon the Supplier's tendering delivery, until such time as the title in the Goods passes to the Client, the Client shall;
- 10.3.1 hold the Goods as the Supplier's fiduciary agent and bailee;
  - 10.3.2 keep the Goods properly stored and separate from those of the Client and third parties so that they remain readily identifiable as the Supplier's property;
  - 10.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 10.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery; and
  - 10.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 10.4 Should the Client resell (or purport to resell) the Goods, or any of them, before title in the Goods passes to the Client, the Client agrees to hold any proceeds of such sale or sufficient part thereof to pay all amounts outstanding to the Supplier as fiduciary for the Supplier. Any such sale shall be subject to the Supplier's title in the Goods.
- 10.5 The Supplier shall be entitled at any time to take repossession of any Goods and products that remain the Supplier's property, and to enter the Client's premises or where the Goods and products may be with such transport as may be necessary and to repossess any such Goods or products freely and unimpeded.
- 10.6 Nothing in the Agreement shall confer any right upon the Client to return any Goods sold or to refuse or delay payment therefor unless otherwise agreed by the Supplier.
- 10.7 Where Goods or products in which the Supplier has property are attached to or stored within any premises other than the Client's premises the Client will secure from the owners or occupiers of such premises equivalent rights to those at clause 10.5 and shall preserve, notwithstanding termination or expiry of the Client's right of entry to such premises, the Supplier's right to enter those premises for the purpose of repossession of the Goods and products still in the Supplier's ownership.

## **11. CLIENT'S OBLIGATIONS**

- 11.1 The Client shall:
- 11.1.1 ensure that the terms of the Order and any information (including without limitation any drawing or Specification) it provides to the Supplier are complete and accurate;

- 11.1.2 co-operate with the Supplier in all matters relating to the Agreement, the Goods or any of the Services;
  - 11.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises and other facilities as reasonably required by the Supplier to provide the Services;
  - 11.1.4 prepare the Client's premises for the supply of the Goods and Services;
  - 11.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 11.1.6 comply with all applicable laws, including health and safety laws;
  - 11.1.7 keep any Supplier Materials at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
  - 11.1.8 give the Supplier any necessary information relating to the Goods and/or Services within a sufficient time to enable the Supplier to perform the supply of Goods and/or Services accordance with the Agreement; and
  - 11.1.9 comply strictly with the payment obligations set out in the Agreement.
- 11.2 If the Supplier's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("**Client Default**"):
- 11.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
  - 11.2.2 the Supplier shall have no liability to the Client in respect of any loss, expense, liability, penalty or other costs the Client may incur (directly or indirectly) in connection with the Supplier's exercise of its rights under this clause 11; and
  - 11.2.3 the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.
- 11.3 Without prejudice to the forgoing, the Client shall, and shall use all reasonable endeavours to ensure that its employees, contractors and representatives shall:
- 11.3.1 comply with:
    - a) all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
    - b) all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and

- c) all applicable anti-money laundering laws, statutes, regulations and codes from time to time in force including but not limited to the Proceeds of Crime Act 2002;
- 11.3.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 11.3.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- 11.3.4 not engage in any activity, practice or conduct that would constitute an offence under the Proceeds of Crime Act 2002 if such activity, practice or conduct were carried out in the UK.

## **12. INSPECTION**

- 12.1 Subject to obtaining the Supplier's prior written consent (at its own absolute discretion), the Client shall have the right to enter the Supplier's premises to inspect the manufacturing facilities and the equipment used by the Supplier in the manufacture of the Goods.
- 12.2 Inspections carried out under clause 12.1 shall be carried out during Working Hours on reasonable notice to the Supplier and shall be subject to the Client following any restrictions and instructions imposed by the Client.

## **13. STATUTORY REQUIREMENTS AND INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 13.1 Whilst every effort is made by the Supplier not to infringe any patents or trademarks or other Intellectual Property Rights belonging to any third party, and whilst the Supplier is not aware that the supply to the Client of the Goods, or the possession or intended use by the Client of the Goods, would infringe any Intellectual Property Right of a third party, the Supplier takes no responsibility for the existence of such third party rights which may be so infringed and the Client must assume the risk of infringement of the same.
- 13.2 The Supplier reserves the right to, without liability to the Client, make any changes in the Specification of the Goods and/or Services which are required to conform with any applicable statutory or regulatory requirement and, where the Goods are to be supplied to the Supplier's specification, to make any changes to the Supplier's specification which do not materially affect their quality or performance.
- 13.3 The Supplier has developed and is the beneficial owner of the Intellectual Property Rights in all product designs and materials and all software programmes which are incorporated in and operate a number of the Supplier's products (including, without limitation, the Supplier's Voice Alarm, PA, CCTV, Fire Safety, Lighting, Audio and Security systems). Save solely for the purposes expressly permitted by and in accordance with s. 296A (1) CDPA or s. 50B (2) CDPA, no part of these product designs, materials or programmes or of any other software comprised in any Goods may be copied, reproduced, reverse compiled, modified or adapted by any user without the Supplier's express licence in writing. This clause 13.3 and clause 13.4 are without prejudice to each other.

- 13.4 The Client acknowledges that all of the Intellectual Property Rights subsisting in or relating in any way to: (a) any drawings, reports, specifications and other similar documents and/or materials provided or prepared by the Supplier in connection with the sale and supply of the Goods and/or the Services, whether in hard copy or electronic form (the "**Documents**"); and (b) the Goods, and all Know-how embodied in, or used in connection with, any of the foregoing are and shall remain vested in and the sole property of the Supplier or its licensors and that the Client shall acquire no further interest in the same than is expressly granted by the Agreement. Unless all payments under this Agreement made in full, the Supplier may revoke any Intellectual Property Rights licence granted to the Client to use and reproduce the Documents under this Agreement at any time.
- 13.5 In consideration of the Client's purchase of and full payment for Goods incorporating the Supplier's software the Supplier grants a non-exclusive licence to the Client to use the basic user functions comprised in the Goods without any further charge to cover level 1 (access silence alarm re-set and test) and level 2 (by means of which parts of systems may be isolated) provided that the equipment data and identifiable labels remain attached to the Goods and are not interfered with. As regards all other Intellectual Property Rights and Know-how referred to in clause 13.4, in consideration of the Client's purchase of and full payment for the Goods, the Supplier grants to the Client a non-exclusive licence to use such Intellectual Property Rights only to the extent necessary for the use of the Goods intended under these Terms and Conditions.
- 13.6 No licence is granted by the Supplier for the reconfiguration or commissioning of the Goods and/or the software comprised in the Goods by the Client or any third party. Use of the Goods and/or the software comprised in the Goods for such purposes may only be licensed by separate agreement signed by a Director of the Supplier on payment of the appropriate fee as determined by the Supplier at its sole discretion.
- 13.7 The parties hereby acknowledge and agree that any and all Know-how and Intellectual Property Rights evolved, generated from or arising in the performance of, or as a result of the supply of the Goods and/or Services to or to the order of the Client, shall (to the extent that they are not already vested in the Supplier) vest in and be the absolute property of the Supplier.
- 13.8 Any software supplied, including any firmware embedded in microcontrollers, in which Intellectual Property Rights are owned by a third party developer or contributor shall be subject to that developer or contributor's terms and conditions. Due to the nature of the software supplied by the Supplier the Supplier gives no warranty, representation or undertaking that any software supplied or used or embedded in its products or any operating system will be free from defects and therefore does not accept any responsibility and/or liability for any defects but will use its reasonable endeavours to procure a remedy (in the manner determined at the Supplier's sole discretion) for any such defect within a reasonable timescale of the defect being brought to its attention.
- 13.9 To the extent that the Goods are to be manufactured in accordance with a drawing, design or Specification supplied by the Client ("Client Materials"), the Client grants the Supplier a royalty free, perpetual license to use any and all Intellectual property Rights subsisting in the Client Materials for the purpose of manufacturing and supplying the Goods and the Client shall indemnify the Supplier 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of any Client Materials. This clause 13.9 shall survive termination of the Agreement.



- 13.10 Each party undertakes that it shall not at any time during the Agreement and for a period of two years after termination of the Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.11.
- 13.11 Each party may disclose the other party's confidential information:
- 13.11.1 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 the Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with clause 13.10; and
  - 13.11.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.12 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.

#### **14. CONDITIONS OF CLIENT'S ORDERS**

- 14.1 The Supplier shall only accept the Order subject to these Terms and Conditions, except as otherwise agreed in writing by an authorized person or director of the Supplier. For contractual purposes the Client's agrees to receive communications from the Supplier electronically and the Client agrees that all agreements, notices, disclosures and other communications that the Supplier provides to the Client electronically shall satisfy any legal requirement that such communications be in writing.
- 14.2 The Agreement constitutes the entire agreement and understanding between the Supplier and the Client and for the avoidance of doubt, supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter and the Client's own terms and conditions (if any) or which are implied by law, trade custom, practice or course of dealing (to the extent that such supersession or extinguishment is permitted by law).

#### **15. DESIGN**

- 15.1 Any design undertaken by the Supplier is based upon information and details provided by the Client (including, without limitation, the Specification). Details of documentation, Specifications and details provided by the Client upon which any design is based are set out in the Written Acceptance. The Supplier shall have no responsibility or liability in connection with:
- 15.1.1 any failure by the Client to provide all details necessary in connection with the production of any Supplier's design and/or
  - 15.1.2 any errors or inaccuracies in such designs caused by any errors or inaccuracies in the documentation, Specifications and details provided by the Client; and/or
  - 15.1.3 such designs being used for any particular purposes not made known to the Supplier.
- 15.2 The Client is responsible for obtaining all design approvals including without limitation Fire Officer Licensing and Public and Local Authority approvals.

- 15.3 Any drawings, specifications or designs issued by the Supplier to the Client for approval shall be deemed to have been approved without reservation by the Client if no comment is made in respect thereof in writing within a period of fourteen days from the date of issue to the Client.
- 15.4 Responsibility for any failure of any design to meet any criteria specified by the Client or required by any competent authority shall rest with the Client.
- 15.5 The Supplier upon receipt of written instructions from the Client will submit any of its designs for the Goods to the relevant Fire Officer Licensing, Public or Local Authority for approval, on behalf of the Client, without prejudice to the provisions of this clause 15.
- 15.6 Siting of field devices on any design drawing produced by the Supplier is intended to give the audibility or intelligibility levels required by B.S.5839, based on information reasonably available to the Supplier when producing the drawing. The Supplier does not, however, guarantee and accepts no liability in respect of the attainment of such levels, and upon completion of any installation and audibility/intelligibility tests it may be found that additional field devices may be required to meet the levels required. In the event that additional field devices are required to enable any installation to meet a particular standard, the Supplier may supply them at prices current at date of dispatch upon receipt of the Client's supplemental order and upon and subject to these Terms and Conditions.
- 15.7 Without prejudice to clause 15.6, the Supplier shall not incur any liability for non-conformance or non-compliance in the event that the performance of the Goods is affected by circumstances not made known to the Supplier at the time of issuing any design including without limitation the acoustic qualities of any structure, the siting of machinery, plant, furniture, or fittings or the interior qualities or structure of any building.
- 15.8 In the event that additional work and/or materials are required to any installation to achieve any particular standard in consequence of any circumstance not made known to the Supplier at the date of its quotation, the Supplier shall be entitled to charge for all such additional work and/or materials, which charges shall be payable by the Client in accordance with the payment terms set out in these Terms and Conditions.
- 15.9 If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with a Specification submitted by the Client, the Client shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with, or paid or agreed to be paid by the Supplier in settlement of, any claim for infringement of any Intellectual Property Rights of any other person which results from the Supplier's use of the Specification.

## **16. INSTALLATION**

- 16.1 The time required to enable the Supplier to provide its Services to the Client is set out in the Written Acceptance or otherwise in writing by the Supplier. The Client acknowledges that this is an estimate only.
- 16.2 Any additional works or services required by the Client must be instructed to the Supplier in writing at a cost to be agreed in writing. Such additional works or services shall be fully chargeable by the Supplier and provided upon and subject to the terms of the Agreement, and the Client shall pay such additional costs in accordance with clause 7.
- 16.3 For the avoidance of doubt, the Supplier shall have no liability for any delays, loss or damage, howsoever arising, in consequence of a failure by the Client to instruct the Supplier in accordance with clause 16.2 in a timely manner, or at all.

- 16.4 The Client shall be responsible for providing the Supplier with unimpeded access to any premises where the Goods and/or Services are to be delivered or provided, with all services available to the Supplier to enable it to discharge its responsibilities effectively.
- 16.5 The Supplier's quotation for any installation is prepared on the basis of the following requirements namely that:
- 16.5.1 electrical power and lighting to and for any works to be undertaken by the Supplier will be provided to the Supplier free of charge;
  - 16.5.2 scaffolding as necessary will be provided for the Supplier free of charge;
  - 16.5.3 use of welfare storage and administration facilities on sites away from the Supplier's Head Office will be provided to the Supplier free of charge;
  - 16.5.4 builders work in connection with any of the Supplier's Goods and Services will be provided free of charge by the Client including the costs of making good;
  - 16.5.5 containment equipment such as cable trays trunking channels and the like will be provided free of charge by the Client for the Supplier's wiring, cables and equipment; and
  - 16.5.6 the supplier will only provide to the Client the documents stated within the Supplier's quotation.
- 16.6 The Client shall, following any installation by the Supplier, attend and witness the final commissioning of the Goods and confirm that the Goods operate correctly and in accordance with the Client's requirements and that the installation is fit for the purpose required by the Client. If the Client does not attend the final commissioning, having been given reasonable notice of the date for attendance, the Client shall be deemed to accept the Goods as installed.
- 16.7 When the Goods are installed and the Commissioning Works are completed, the Supplier shall if requested by the Client issue, at the Client's cost, a commissioning certificate to the Client. If the Client uses, activates or operates the Goods prior to the date of the certificate, practical completion shall be deemed to be the date the Client used, activated or operated the Goods.

## 17. COMMISSIONING

- 17.1 Where the Client is to install Goods provided by the Supplier and the Supplier is carrying out the Commissioning Works only:
- 17.1.1 the Client shall complete, sign and deliver to the Supplier not less than fourteen days before commissioning is required the Supplier's form of application for Commissioning Works ("**Commissioning Application**");
  - 17.1.2 the Client shall ensure that the whole of the works to be commissioned are available to the Supplier to enable the Supplier to carry out the Commissioning Works in one continuous operation; and
  - 17.1.3 the Supplier shall be entitled to charge and the Client shall pay the Supplier standing time and additional costs at the Supplier's stated daily commissioning rate set out in the Price List or multiples thereof incurred if the works to be commissioned are incomplete or not available to the Supplier on the date stated for commissioning or if the Commissioning Works are delayed or interrupted due to the fault of the Client.

- 17.2 The Supplier will carry out Commissioning Works on Business Days only and during normal Working Hours.
- 17.3 In the event that the Client requires Commissioning Works outside normal Working Hours it must issue to the Supplier an amendment to the Commissioning Application. Commissioning works that take place outside Working Hours shall be chargeable at the Supplier's premium rate table set out in the Price List.
- 17.4 The Supplier's quotation for Commissioning Works is prepared upon the basis that there shall be provided by the Client free of charge to the Supplier for use by the Supplier's commissioning engineer(s):
- 17.4.1 mains and temporary power;
  - 17.4.2 scaffolding and access equipment;
  - 17.4.3 storage and welfare facilities;
  - 17.4.4 as fitted installation drawing/installation schematic drawings; and
  - 17.4.5 installers' test sheets and attendance by a representative of the installer.
- 17.5 The Supplier shall not be required to complete any Commissioning Works or issue a commissioning certificate unless there is a representative of the Client and/or the person responsible for installing the Goods present during the process of commissioning.
- 17.6 The Client shall be responsible for witnessing the Commissioning Works and signature on completion certifying that he/she/its authorised representative has witnessed the satisfactory operation of the Goods. In the event that the Client fails to do so, the Warranty in clause 3 shall not be available or apply in respect of the Goods.
- 17.7 "Cause and effect" testing is not included as standard as part of our maintenance/service contracts unless expressly detailed and agreed otherwise. Such testing generally requires the assistance of both the system owner and third parties whose systems interact with the fire alarm system. The level of any "cause and effect" testing should be determined as part of the Fire Risk Assessment that is undertaken as a statutory requirement of the building owner/responsible person. Once the need for and extent of "cause and effect" testing is established a methodology and associated costs may be agreed between the Supplier and the Client as a separate instruction for services.

## **18. PUBLIC DISPLAY OF THE GOODS AND COPYRIGHT**

- 18.1 The Client acknowledges that in the event that any Goods appear in any public performance, replaying or showing in circumstances where the Client or the person responsible for the performance, replay or showing has not obtained a license from the Supplier to use the Goods in such a manner, then this will amount to an infringement of the Supplier's Intellectual Property Rights that subsist in the Goods and the Client will be liable to compensate the Supplier accordingly.
- 18.2 The Client represents and warrants to the Supplier that it will hold or obtain (or ensure that any relevant third party holds) the appropriate licences and consents from the Supplier and any relevant third party for any such performance, playing or showing referred to in clause 18.1 prior to using the Goods in connection with any such purpose.

18.3 In the event that the Supplier becomes aware that any Goods supplied by it are or may in its opinion appear in any way which infringes the copyright of any third party it shall be entitled to notify the copyright owners or other responsible body of such use.

## 19. PROTEC SOFTWARE

19.1 The Supplier may from time to time issue software updates which will be made available on the Supplier's website at <https://www.protec.co.uk/downloads-list/software>. The Client agrees to regularly check this website for any updated software and to download and procure the installation of such updated software on to their systems by a competent person. The Client is wholly responsible for ensuring that the software in their systems is always kept up to date at no further cost to the Supplier. The Supplier shall have no liability arising from the Client's failure to comply with this clause 19, and the Warranty may be invalidated by any such failure.

## 20. DATA PROTECTION

20.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 20 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 20, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK. **Personal data** has the meaning given in the Data Protection Legislation.

20.2 The parties acknowledge that the Client may, during the term of the Agreement, share with the Supplier certain personal data regarding the Client's employees, officers, customers, agents or consultants for the purpose of allowing the Supplier to perform its obligations and/or exercise its rights under the Agreement. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and the Supplier is the processor of such personal data.

20.3 Without prejudice to the generality of clause 20.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Agreement.

20.4 Without prejudice to the generality of clause 20.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations and/or the exercise the Supplier's rights under the Agreement:

20.4.1 process that personal data only on the documented written instructions of the Client unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall notify the Client of this unless those Applicable Laws prohibit the Supplier from so notifying the Client;

- 20.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 20.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 20.4.4 not transfer any personal data outside of the European Economic Area unless the following conditions are fulfilled:
- a) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
  - b) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - d) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
- 20.4.5 use reasonable endeavours to assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 20.4.6 notify the Client without undue delay on becoming aware of a personal data breach;
- 20.4.7 at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the Agreement unless required by Applicable Law to store the personal data; and
- 20.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 20 and inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

20.5 The Client consents to the Supplier appointing third-party processors of personal data from time to time under the Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement.

## **21. BREXIT**

21.1 The following definitions apply to this clause 21 only:

- 21.1.1 **"Adverse Impact"** means any of the following:
- a) an adverse impact on the Supplier's ability to perform the Agreement in accordance with its terms and the applicable law;
  - b) a material increase in the costs incurred by the Supplier in performing the Agreement; and
  - c) the Supplier being unable to receive the benefit of the Agreement in full.
- 21.1.2 **"Brexit"** means the UK ceasing to be a member state of the European Union and ceasing to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union (as such arrangements are extended from time to time); and
- 21.1.3 **"Brexit Trigger Event"** means the occurrence of an Adverse Impact caused directly by Brexit or any discussions, proposals, negotiations or any other steps taken by the UK government or a body in any other jurisdiction in anticipation of or related to preparation for Brexit.

21.2 If a Brexit Trigger Event occurs, the Supplier may:

- 21.2.1 require the Client to negotiate in good faith an amendment to the Agreement to alleviate the Brexit Trigger Event; and
- 21.2.2 if no such amendment is made to the Agreement within 30 days, terminate the Agreement by giving the other party not less than 14 days' written notice.

21.3 Save as expressly provided in this clause 21 and clause 5.5.2, a Brexit Trigger Event shall not terminate or alter (or give any party a right to terminate or alter) the Agreement, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this clause and any other provision of the Agreement, the provisions of this clause shall prevail.

## 22. NON-SOLICITATION

The Client shall not during the continuance of the Agreement or of the provision by, on behalf of, or (directly or indirectly) through the Supplier of any engineering, maintenance or servicing services in relation to the Goods (the "**Maintenance Services**"), or in each case within 6 months thereafter, whether by itself or with or through any third party and whether for its own account or for any third party, directly or indirectly solicit, approach or canvass away from the Supplier or any Group Company or employ or engage any employee or contractor of the Supplier or of any Group Company which in the previous 6 months had been engaged by the Supplier or any Group Company in the supply of the Goods and/or Services or any of the Maintenance Services, with a view to the specific knowledge or skills of any such employee or contractor which were utilised in such supply being used by or for the benefit of the Client, any company in its Group, or any party in competition with the Supplier, nor shall the Client suffer or permit any third party to do any of the above acts.

## 23. SET OFF

23.1 All amounts due under the agreement from the Client to the Supplier shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

- 23.2 Without prejudice to the foregoing, and for the avoidance of doubt, the Client shall not be entitled to set off any amounts due to the Supplier under the Agreement or any other contract against any sums due, or alleged to be due, from the Supplier to the Client under the Agreement or any other contract.
- 23.3 The Supplier may at any time, without notice to the Client, set off any liability of the Client to the Supplier against any liability of the Supplier to the Client, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Agreement. If the liabilities to be set off are expressed in different currencies, the Supplier may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Supplier of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Agreement or otherwise.

## **24. ERRORS - OMISSIONS**

In the event that any quotation by the Supplier is found to contain an error or omission then the Supplier reserves the right to amend the same without any liability.

## **25. WAIVER**

No waiver or forbearance by the Supplier in respect of any breach of the Agreement by the Client shall be effective unless it is given or confirmed in writing. No such waiver or forbearance shall be taken as a waiver of any subsequent breach of the same or any other provision.

## **26. SEVERABILITY**

If any provision of the Agreement between the Supplier and the Client is held by a court or other competent authority to be invalid or unenforceable in whole or part, the provision shall be amended to the extent necessary to remove any invalid terms and the validity of the other provisions of the Agreement and the remainder of the provision in question shall not be affected.

## **27. THIRD PARTY RIGHTS**

- 27.1 Except where expressly stated in the Agreement, no party who is not a party to the Agreement between the Supplier and the Client shall be entitled by virtue of the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Agreement.
- 27.2 The Supplier shall not be responsible for nor shall it accept any costs, damages or other liabilities as a result of any undertakings given by a third party.
- 27.3 The Supplier shall not accept or be required to accept any undertakings or conditions offered to the Client by or on behalf of any third party.

## **28. NOTICES**

- 28.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Supplier's quotation or Written Acceptance or the Client's Order.
- 28.2 Any notice or communication shall be deemed to have been received:



- 28.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 28.2.2 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 or at the time recorded by the delivery service
- 28.2.3 if sent by email, at the time of transmission, or, if this time falls outside Working in the place of receipt, when Working Hours resume.
- 28.3 This clause 28 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## 29. ASSIGNMENT

- 29.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.
- 29.2 The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement.

## 30. PRIORITY

The documents comprising the Agreement shall be construed in the following order of precedence in the event of any discrepancy:

- a) the Written Acceptance;
- b) the Schedule(s);
- c) the Terms and Conditions;
- d) the Order;
- e) any other document forming part of the Agreement.

## 31. PROPER LAW AND JURISDICTION

Any dispute arising out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") shall be governed by and construed in accordance with English Law and, subject to clause 32, the Client and the Supplier submit to the exclusive jurisdiction of the English Courts.

## 32. DISPUTE RESOLUTION PROCEDURE

- 32.1 Without prejudice to the Supplier's rights under clause 8, if a **Dispute** arises then except as expressly provided in the Agreement, the parties shall follow the procedure set out in this clause 32.
- 32.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (the "**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, a senior representative of the Supplier and senior representative of the Client shall attempt in good faith to resolve the Dispute;

32.1.2 if the senior representative of the Supplier and senior representative of the Client are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a Director of the Supplier and senior officer (which may either be a Director, partner or business owner (as applicable)) of the Client who shall attempt in good faith to resolve it; and

32.1.3 if the Director of the Supplier and senior officer of the Client are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (the "**ADR notice**") to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.

32.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute.