

## **Standard Terms & Conditions – June 2022**

### **1. Definitions**

- 1.1. In these conditions:
- 1.2. The “Act” shall mean the Housing Grants Construction and Regeneration Act 1996.
- 1.3. An “Authorised Official” shall mean a Director of the Company.
- 1.4. The “Buyer” shall mean the person who agrees to buy Goods or Services from the Company;
- 1.5. The “Company” shall mean Elliott Environmental Services Ltd;
- 1.6. The “Conditions” shall mean these conditions and shall exclude any conditions or qualifications proposed by the Buyer unless the same have been accepted in writing by an Authorised Official;
- 1.7. The “Delivery Address” shall mean the address to which, and “Delivery Date(s)” shall mean the date(s) on which, the Company has either agreed to deliver Goods or agreed to lease the Goods available for collection by the Buyer or Hirer
- 1.8. “Goods” shall mean all or any of the Goods (including plant and equipment) which form the subject matter of the contract;
- 1.9. The “Hirer” shall mean the person who agrees to hire Goods from the Company;
- 1.10. “Services” shall mean the provision of labour to carry out design, service, installation or commissioning tasks.

### **2. Terms & Conditions**

- 2.1. Goods or Services supplied by the Company are supplied subject to the Conditions without any amendment unless such amendment is expressly accepted in writing by an Authorised Official.
- 2.2. Save as agreed in the Conditions, the Company supplies the Goods or Services without any warranty condition or stipulation of any kind, whether express or implied, and the Company accepts no liability for any loss or damage to the Buyer or any other person, whether caused by the breach of contract negligence or other default of the Company or otherwise. The Buyer must provide insurance appropriate to cover any losses for which the Company is not liable under the Conditions.
- 2.3. The Company accepts liability for death or personal injuries caused by the negligence of the Company or its employees to the extent that such negligence contributes to such death or personal injury.

### **3. Acceptance**

- 3.1. Quotations and tenders are open for acceptance for the period stated therein or otherwise for 30 days from the date thereof, save that the Company reserves the right to withdraw its quotation or tender at any time prior to its acceptance by a notice in writing to the Buyer or Hirer.
- 3.2. All orders must be in writing accompanied by sufficient information to enable the Company to proceed without delay with the execution of the order. Once given, an order cannot be cancelled by the Buyer without the consent of the Company.
- 3.3. After an order has been received by the Company, the Company may cancel the contract by a notice in writing given within 3 days from receipt of the order.

### **4. Price**

- 4.1. Unless otherwise stated all prices are exclusive of VAT, which will be charged at the rate current at the date of the invoice.
- 4.2. Prices may be varied at any time to reflect corresponding variations in the Company’s own cost of materials, fuel and labour.
- 4.3. The Buyer shall be liable for any increased costs or expenses incurred by the Company as a result of delay caused by the Buyer.

### **5. Terms of Payment**

- 5.1. If the Buyer or Hirer does not have a credit account with the Company, he will be invoiced and must pay in full for Goods and Services either at the time when or before the Goods or Services are supplied.
- 5.2. If the Buyer has a credit account with the Company, then the Company will from time to time issue invoices to the Buyer. Payment in full is due strictly 30 days from the date of the invoice. The due date is the final date for payment. If the Buyer fails to pay in full on the due date the Company shall be entitled at its discretion:
  - 5.2.1. to charge interest on any amounts overdue at the rate of 4% above the base rate of Barclays Bank PLC from the date of issue of the invoice until payment; and/or
  - 5.2.2. to suspend performance of the Contract by the Company until payment has been made; and/or
  - 5.2.3. to cancel the contract.
- 5.3. The Buyer shall not be entitled to set off withhold or not pay any sum invoiced by the Company unless an Authorised Official has consented to the same in writing before the final date for payment. If written consent is not given, the Buyer may not retain possession of the disputed sum but may pay that sum into a stakeholder account in the joint names of the Buyer and the Company, provided that the Buyer has issued to the Company a withholding notice as required by s111 of the Act at least 7 days before the final date for

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payment. Neither party shall have access to any funds in this account until the dispute is resolved by adjudication, litigation or agreement.

5.4. Payment for any Goods or Services supplied shall become due immediately if the Buyer or Hirer enters into any negotiations for arrangement or composition with or for the benefit of his creditors or becomes insolvent within the meaning of the Insolvency Act 1986 or if any process of execution or distress is levied against him which is not paid out within 14 days from the commencement of such or if a liquidator or receiver is appointed (save for the purposes of reconstruction not involving insolvency). If any of these events occurs the Company shall also have the right to terminate the contract forthwith.

### **6. Reservation of Title**

6.1. Title in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full for the price of the Goods and of all other goods sold by the Company to the Buyer and for all other sums due to the Company from the Buyer.

6.2. Until such time as title in the Goods passes to the Buyer:

6.2.1. the Buyer may resell or use the Goods in the ordinary course of his business but shall account to the Company for the proceeds of such sale or use, whether tangible or intangible including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds properly stored, protected and insured.

6.2.2. if the Buyer has not sold or used the Goods, he shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from any others and properly stored, protected, insured and identified as the Company's property.

6.2.3. the Company may at any time require the Buyer to deliver up the Goods to the Company and if the Buyer fails to do so the Company may forthwith enter upon any premises of the Buyer or a third party where the Goods are stored and repossess the Goods.

6.3. The Buyer shall not be entitled to pledge the Goods or in any way charge them by way of security for any indebtedness. If the Buyer breaches this condition all monies due under the Conditions shall become immediately payable.

### **7. Risk**

7.1. Goods are at the Buyer or Hirers risk immediately upon delivery to the Delivery Address or upon collection by the Buyer as the case may be. Any losses resulting from damage to Goods, other than the cost of replacing or repairing Goods damaged as a result of the negligence of the Company, shall be the sole responsibility of the Buyer.

### **8. Delivery and Storage**

8.1. Subject to conditions 8.2 and 8.3 and 8.5 below, the Company shall make all reasonable efforts to deliver the Goods to the Delivery Address on the Delivery Date(s) or, if it is agreed that the Buyer or Hirer will collect the Goods, to arrange for the Goods to be available for collection by the Delivery Dates.

8.2. The Company shall be under no obligation to deliver Goods to any site that is not readily accessible to normal transport.

8.3. If no Delivery Address has been agreed, or if the Buyer or Hirer is to collect the Goods, the Company shall have the Goods ready for despatch or available for collection by the Delivery Date(s), and shall notify the Buyer or Hirer that the Goods are so ready or available. The Buyer or Hirer shall give the Company a delivery address or collect the Goods within 10 days from any such notice, in default of which obligation the Company may store the Goods at the Buyer or Hirer's expense or may call upon the Buyer or Hirer to make arrangements for storage.

8.4. If the Company stores Goods after the Delivery Date, pursuant to condition 8.3 above or to an agreement between the parties, then the Company shall issue monthly invoices for storage charges, such invoices to be paid in accordance with clause 5, or immediately if the Buyer or Hirer does not have a credit account with the Company. The Company may invoice the Buyer or Hirer, and shall be paid, for the Goods as if they had been delivered or collected on the Delivery Dates.

8.5. The Company will make every reasonable effort to deliver on the Delivery Dates. However, delays are possible and the Company does not accept any liability for loss caused by delay unless such delay was caused by the negligence of the Company, in which case the amount of the Company's maximum liability shall be limited to the amount of the purchase price of the Goods delivered late.

8.6. If packing cases are charged for, credit will be given in respect thereof if returned in good condition carriage paid within 30 days of receipt by the Buyer or Hirer.

8.7. The Buyer or Hirer must inspect Goods immediately on arrival and give notice in writing of any shortage or defective or damaged Goods to the carrier and to the Company immediately on discovery and in any event within 3 days of arrival. Packing and contents should be retained for inspection by the carrier's inspectors. Failure to report any reasonably discoverable shortage or defective or damaged Goods within this time will relieve the Company of any liability therefor.

### **9. Erection & Installation**

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9.1. Where the Company's work involves erection or installation on site, the Buyer must ensure that the site is suitable and safe for the task to be undertaken.

9.2. If the installation of equipment interfaces with existing equipment or building fabric the Company accepts no responsibility for damage occasioned thereto by the normal work of installation.

### **10. Description and Performance**

10.1. No descriptive specifications, drawings, particulars of weights and dimensions or other information, whether submitted with a tender or quotation or contained in the Company's catalogue, price list or advertising matter, shall form part of the contract. Such information is indicative and approximate only and its accuracy is not guaranteed.

10.2. The Company reserves the right to modify without notice the designs and specifications for and materials used in the Company's systems.

10.3. Performance figures if given are such as may be expected to be attained on test by the Company after completion of the installation and are subject to tolerances. The Company shall not be liable for a failure to achieve figures unless they have been specifically guaranteed and the Company has had reasonable opportunity to achieve them. In any event the Company will not be liable if the Company either did not install or did not commission the equipment.

10.4. The Buyer or Hirers shall be deemed to have taken notice of all technical requirements and information supplied with the Goods.

### **11. Patents**

11.1. In the event of any claim against the Buyer for infringement of patents involving the Goods supplied by the Company, the Buyer shall notify the Company immediately and shall not admit any liability.

### **12. Confidential Information**

12.1. Any information, drawings or designs supplied by the Company to the Buyer shall be confidential and shall not be published or disclosed to any third party or be used by the Buyer for any purpose other than as agreed in writing by the Company.

### **13. Returns for Credit**

13.1. If the Buyer returns Goods for credit, the issue of credit will be at the Company's discretion, and in any event subject to the following:

13.1.1. the Goods must be unused and the packaging intact; and

13.1.2. the Goods must be returned safely to the Company's premises, with the correct documentation including details of the Company invoice relating to the original supply.

13.1.3. the Company may make a restocking charge to cover the administration costs involved.

13.1.4. if the Goods are a special order, credit will be issued at the sole discretion of the Company.

### **14. Drawings , Operation and Maintenance Manuals**

14.1. If operation and maintenance manuals or other information is supplied to the Buyer, it is for the Buyer to ensure that the information is conveyed to the correct end user or operator of the Goods.

### **15. Warranty Period**

15.1. Unless otherwise agreed the warranty period for the Goods is 12 months from the date of delivery.

15.2. During the warranty period, the Company shall upon written request of the Buyer repair or replace (at its own discretion) Goods which are faulty by reason of defective materials, workmanship, erection or installation. The Company shall not be liable for any fault caused by any failure to observe any technical requirements.

15.3. The Company's liability shall be limited to the obligation to replace or repair the Goods and the Company shall not be liable for other costs, such as dismantling, removal, redelivery or reinstatement costs. The Company shall not be liable for any other type of loss arising out of the purchase or use of the Goods including but not limited to any consequential losses arising from defective material or workmanship, erection or installation, and shall have no liability other than its liability under this clause, which shall be in substitution for and to the exclusion of any other warranty or condition in respect of quality or description or fitness of the Goods for any purpose.

15.4. Without prejudice to the foregoing, liability is in particular excluded for damage caused by normal wear and tear, improper storage, handling, operation or maintenance, failure to observe erection, operating or maintenance instructions, lack of supervision, excessive loading, operation of equipment outside design conditions, inadequate protective measures, including inadequate protection against freezing, any work, including any modification or repair, not done by the Company, corrosion damage caused by aggressive water, atmosphere or electrolytic action, failure to report faults or deficiencies promptly, faulty goods supplied by the Buyer or others or any reason beyond the control of the Company.

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**16. Force Majeure**

16.1. In the event of war, invasion, act of foreign enemy, hostility, civil war, rebellion, revolution, insurrection, military or usurped power, any statute rules regulations orders or requisitions issued by any government department, council or any other duly constituted authority, strike, lockout, breakdown of plant or any other event beyond the Company's control, the Company shall be relieved of liabilities incurred under this contract wherever and to the extent that compliance with such obligations is prevented, frustrated or impeded as a consequence of any such event

**17. Jurisdiction and Dispute Resolution**

17.1. Either party may at any time refer any dispute or difference to adjudication, such adjudication to be in accordance with the Act.

17.2. The contract is to be interpreted in accordance with English law and is subject to the exclusive jurisdiction of the English courts.

**18. Hire Contracts**

18.1. These additional conditions apply if Goods are hired to the Hirer:

18.2. The Hirer will issue a written confirmation of his hire order.

18.3. The Goods remain at all times the property of the Company and the Hirer shall have no right, title or interest in the Goods.

18.4. The charge for hire, delivery and collection of Goods will be as agreed prior to commencement of the hire period.

18.5. The Hirer shall be responsible for the loading and unloading of the plant or equipment at any site, and any of the Company's personnel who assist the Hirer shall do so as agents of the Hirer under the Hirer's direction and control.

18.6. Unless notification of damage or shortage is made in writing to the Company within 3 days of the delivery of Goods to the Hirer's site, they shall be deemed delivered and, where applicable, constructed in good working condition to the satisfaction of the Hirer.

18.7. The Hirer shall be responsible for the safekeeping and insurance of the Goods and for their ongoing maintenance and upkeep, including without limitation any time based operational and maintenance tasks such as checking levels of lubricating oil and coolant and cleaning air filters, and for ensuring that the Goods are used safely and that any defects are reported to the Hirer immediately. The Hirer shall ensure the Goods are not used outside their operational design parameters or in an environment which may cause damage to the Goods or injury to any person.

18.8. The Hirer shall allow the Company's employees, agents or insurers safe and proper access to the Goods at all reasonable times to inspect, test, adjust, maintain, repair or replace the same. If the Goods fail, the Company will as soon as reasonable practical attend site to repair or, if repair is not practical or cost effective, to replace the Goods. In no circumstances should the Hirer or any third party undertake any repairs or modifications without the Company's written permission.

18.9. The Hirer shall be responsible for the return in good working condition (fair wear and tear excepted) of all Goods and associated equipment on completion of the hire period. If the Hirer breaches this condition, he shall be liable to the Company for the full cost of any repairs which the Company considers necessary or desirable or, if the Company considers that repair would not be practical or cost effective, the whole cost of replacement of the Goods.

18.10. The company may terminate the contract following non-payment, dissolution, or insolvency of the Hirer.