

1 **INTERPRETATION**

1.1 In these conditions (the **Conditions**), the following expressions shall have the following meanings:

Credit Terms: means any credit terms applied to the Customer by ELECEX in respect of the Services.

Customer: means any company which has entered into a contract with ELECEX (either by contract, frame work agreement or by completion of a valid PO which is accepted by ELECEX) for the performance of work or Services by ELECEX in relation to which the Equipment is to be used.

Customer Group: means the Customer, its subsidiaries and associates, any company of which it is a subsidiary (its holding company) and any other subsidiaries and associates of any such holding company; and each company in a group is a member of the group.

Delivery: shall be accordance with the PO

Equipment: means the Goods, as defined in clause 3.1 below, and any associated equipment or materials.

Labour: means any ELECEX Technician, supervisor or other officers or employees provided by ELECEX to the Customer to carry out the Services.

Mobilisation: means the point at which ELECEX Equipment or Labour are dispatched from their base location en route to Customer's location.

Outgoing Manifest: means the itemised list of component parts of the Equipment sold by ELECEX to the Customer.

Parties: means the Customer and ELECEX.

PO: the purchase order or service order issued by the Customer to ELECEX.

Proposal: the proposal attached to these Conditions for the provision of the Services.

Quotation: means the quotation for the cost of provision of the Services and Equipment issued by ELECEX to the Customer.

Services: the provision of the Equipment, Labour, guidance, installation works and costs.

ELECEX: means Elececx Limited (registered in Scotland with company number SC508542) and having its registered office at 9 Almond Road, Middlefield Industrial Estate, Falkirk, FK2 9FQ.

ELECEX Group: means ELECEX, its subsidiaries and associates, any company of which it is a subsidiary (its holding company) and any other subsidiaries and associates of any such holding company; and each company in a group is a member of the group.

ELECEX Guidelines: the ELECEX guidelines in respect of the use and maintenance of the Equipment, as attached to the Outgoing Manifest, to include ELECEX's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same.

ELECEX Onshore Base: means 9 Almond Road, Middlefield Industrial Estate, Falkirk, FK2 9FQ.

ELECEX Technician: means any qualified ELECEX personnel authorised and trained in respect of the Equipment.

1.2 Clause headings do not affect the interpretation of these Conditions.

1.3 A reference to a **person** includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).

1.4 Words in the singular include the plural and in the plural include the singular.

1.5 A reference to a particular law in these Conditions is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.

2 **BASIS OF AGREEMENT**

2.1 ELECEX shall provide the Services to the Customer in accordance with the PO subject to these Conditions, which shall apply to the PO to the exclusion of any other terms or conditions.

2.2 The Proposal is issued subject to contract and is issued without prejudice. It does not constitute acceptance by ELECEX of any terms and conditions the Customer may propose and ELECEX reserves the right to review any proposed terms and conditions to assess their acceptability or otherwise to ELECEX.

2.3 Prior to any Mobilisation, a PO signed by an authorised signatory of the Customer must be received by ELECEX. Order values will be limited to the Customer's account with ELECEX.

2.4 Credit Terms will be assigned upon successful completion of the relevant ELECEX account application process.

2.5 Each Mobilisation will be at the instruction of the Customer and any documents necessary to facilitate travel will be issued by the Customer in line with the PO.

2.6 Contract acceptance and Mobilisation is subject to:

- (a) Customer acceptance of any required maintenance and re-certification of Equipment necessary for the ongoing preservation of health and safety [as included in the Outgoing Manifest]; and
- (b) the availability of the Equipment and Labour resources from time to time.

2.7 The Customer accepts that catastrophic failure of the Equipment will arise if the ELECEX Guidelines are not adhered to.

3 **GOODS**

3.1 The materials described in the Outgoing Manifest.

4 **DELIVERY OF THE GOODS**

4.1 Will be determined by PO.

5 **WARRANTY**

5.1 ELECEX warrants that from a period of 12 months from Delivery, or as provided as manufacturer's warranty (**Warranty Period**), the Goods shall:

- (a) conform with their description;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by ELECEX.

5.2 Subject to clause 5.3 and provided that the Customer has followed the ELECEX Guidelines, if:

- (a) the Customer gives notice in writing to ELECEX during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) ELECEX is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by ELECEX) returns such Goods to ELECEX's place of business at the Customer's cost,

ELECEX shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 ELECEX shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the defect arises because the Customer has not followed the ELECEX Guidelines;
- (b) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (c) the defect arises as a result of ELECEX following any drawing, design or specification supplied by the Customer;

- (d) the Customer alters or repairs such Goods without the prior written consent of ELECEX;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, ELECEX shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

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

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by ELECEX to the Customer.

6 **RISK AND TITLE**

6.1 The risk of loss or damage to the Equipment shall pass to the Customer at the time the Equipment:

- 6.1.1 is collected from a ELECEX's premises by a Customer or their designated freight carrier; or
- 6.1.2 is delivered by ELECEX to the Customer's embarkation point.

7 **PAYMENT**

7.1 Quotations for Equipment are valid for 30 days from the date of such Quotation only.

7.2 Where a Quotation is provided based on a work scope which then changes at the Customer's request, ELECEX reserves the right to charge the Customer for any additional Equipment and Services supplied. Such charge will be agreed in advance and in writing between the parties.

7.3 ELECEX shall submit to the Customer an invoice within 30 days following completion of the Services.

7.4 Within 30 days of receipt by the Customer of a correctly prepared invoice by ELECEX to the address of the Customer specified in the PO, the Customer shall make payment in respect of such invoice.

7.5 Interest shall be payable for late payment of correctly prepared invoices in the sum of 3% per annum above the base rate of the Royal Bank of Scotland plc at the time until the date actual payment is made.

7.6 Any such interest to be cleared by ELECEX shall be invoiced within 10 working days of payment of the invoice to which the interest relates. Payment of this invoice in respect of interest shall be paid in accordance with the provisions of this clause 7.

8 CONFIDENTIALITY

8.1 The Customer will undertake to keep confidential all information in respect of any PO and additional documentation in connection with the Services. Such confidentiality will be strictly adhered to during contractual negotiations, during the provision of the Services, following completion, and in the event of any termination or suspension of Services.

9 INDEMNITY

9.1 ELECEX shall be responsible for and shall save, indemnify, defend and hold harmless the Customer Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) loss of or damage to property of the ELECEX Group whether owned, hired, leased or otherwise provided by the ELECEX Group arising from or relating to the performance of the Services;
- (b) personal injury including death or disease to any person employed by the ELECEX Group arising from or relating to the performance of the Services; and
- (c) personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the ELECEX Group.

9.2 The Customer shall be responsible for and shall save, indemnify, defend and hold harmless the ELECEX Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) loss of or damage to property of the Customer Group arising from or relating

to the performance of the Services located at any place where the Services are being performed;

- (b) personal injury including death or disease to any person employed by the Customer Group arising from or relating to the performance of the Services; and
- (c) personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Customer Group.

9.3 For the purposes of clause 9.4, the expression “Consequential Loss” shall mean:

- (a) consequential or indirect loss under Scots law; and
- (b) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (a), and whether or not foreseeable at the date of commencement of the Services.

9.4 Notwithstanding any provision to the contrary elsewhere in the PO or these Conditions, the Customer shall save, indemnify, defend and hold harmless the ELECEX Group from the Customer Group’s own Consequential Loss and ELECEX shall save, indemnify, defend and hold harmless the Customer Group from ELECEX Group’s own Consequential Loss, arising from, relating to or in connection with the performance or non performance of the Services.

9.5 All exclusions and indemnities given under this clause (save for those under clauses 9.1(c) and 9.2(c)) shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in delict, under contract or otherwise at law.

9.6 If either of the Parties becomes aware of any incident likely to give rise to a claim under the above indemnities, they shall

notify the other and both parties shall co-operate fully in investigating the incident.

10 TERMINATION

10.1 ELECEX shall have the right by giving 30 days written notice to the Customer to terminate the Services at such time or times as ELECEX may consider necessary for any or all of the following reasons:

- 10.1.1 to suit the convenience of ELECEX;
- 10.1.2 in the event of default of these Conditions on the part of the Customer;
- 10.1.3 in the event that the Customer makes any voluntary arrangement with its creditors, becomes bankrupt, becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reorganisation);
- 10.1.4 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer;
- 10.1.5 the Customer ceases, or threatens to cease, to carry on business; or
- 10.1.6 ELECEX reasonably believes that the Customer is in breach of clause 11.

10.2 In the event of termination under clause 10.1.1, ELECEX shall be entitled to payment of any sums due under the PO in accordance with clause 7.

10.3 In the event of termination under clauses 10.1.2 to 10.1.6, any sums due under the PO shall become immediately payable notwithstanding any previous agreement or arrangement.

10.4 ELECEX shall have the right to terminate the Services with immediate effect if ELECEX reasonably believes there is an immediate threat to the safety and well-being of an ELECEX Technician supplied under the Services. In the event of such a termination any sums due under the PO shall become immediately payable notwithstanding any previous agreement or arrangement.

11 ANTI-BRIBERY AND CORRUPTION/TRADE SANCTIONS

11.1 Each of the Parties irrevocably and unconditionally warrants and represents: -

11.1.1 that they will comply with all applicable laws, statutes, regulations, and codes relating to bribery, corruption, anti-trust, money laundering, import/export controls, trade sanctions, financial sanctions and criminal matters including, but not limited to, the UK Bribery Act 2010, UK/EU Trade Laws and US Trade Laws, and all such legislation as the same may be modified, supplemented or replaced; and

11.1.2 that they have, their own policies and procedures, including but not limited to "adequate procedures" under the UK Bribery Act 2010, to prevent contravention of the laws and regulations referred to in clause 11.1.1 and to ensure compliance with local law and will enforce them where appropriate.

12 FORCE MAJEURE EVENT

12.1 For the purposes of this Agreement a Force Majeure Event shall include, but shall not be limited to, industrial disputes, an act of God, war, riot, fire, flood, storm, compliance with any law or governmental order, rule or direction, or default by suppliers.

12.2 ELECEX shall not be liable to the Customer as a result of any delay or failure to perform its obligations under Agreement as a result of a Force Majeure Event.

12.3 If the Force Majeure Event persists for longer than 12 weeks, either of the Parties shall have the right to immediately terminate this Agreement by giving written notice to the other.

13 LIMITATION OF LIABILITY

13.1 Subject to ELECEX having used all reasonable endeavours to complete the Services and to comply with its obligations under the PO and these Conditions, ELECEX's total cumulative liability to the Customer arising out of or in connection with the performance of the PO or these Conditions shall be limited to the value of the PO.

13.2 Provided, however, that the above limitations shall not apply to any indemnities given by ELECEX under clause 9.

14 GENERAL

14.1 These Conditions (together with the terms, if any, set out in the PO) constitute the entire agreement between the Parties, supersede any previous agreement or understanding and may not be varied except in writing between the Parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

14.2 If any provision of these Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

14.3 Any dispute arising under or in connection with the PO or these Conditions shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of The Law Society of Scotland.

14.4 The law of Scotland shall apply to the PO and these Conditions, and the Parties agree to submit to the exclusive jurisdiction of the Scottish courts in respect of all matters arising out of or connected with them.