

1. Definitions

1.1 In these Conditions, except where the content otherwise requires, the following definitions apply:

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

Buyer: means the person, firm or company with whom the Seller contracts subject to these Conditions.

Conditions: these terms and conditions as amended from time to time in accordance clause 20;

Contract: the contract between the Seller and the Buyer for the supply of Goods and/or Services in accordance with these Conditions.

Delivery Date: means the date for delivery of the Goods and/or Services as set out in the Order or otherwise agreed between the parties in writing.

Goods: means the articles, products and goods including samples to be provided by the Seller to the Buyer as set out in the Specification.

Insolvency Situation: means: (i) a party has a receiver, liquidator, administrator, trustee or an individual with a similar role appointed over any of its assets; (ii) a party proposes to make any arrangement with its creditors; or (iii) any event occurs, or proceeding is taken in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events listed above.

Order: means the Buyer's order for the Goods and/or Services as set out in the Buyer's purchase order form;

Price: has the meaning given to it in clause 9.1;

Seller: means Epta UK Ltd, a company incorporated in England and Wales with company number 00726533 and having its registered address at Highfield Works, Highfield Road, Idle, Bradford, BD10 8RU, whether it accepts the Order on its own behalf or on behalf of its related company.

Services: means the services to be provided by the Seller to the Buyer as set out in the Specification.

Specification: means any specification for the Goods and/or Services, including any related plans, programmes and drawings, that is agreed in writing by the Buyer and the Seller; and

WEEE: means waste electrical and electronic equipment and has the same meaning given to the term in the Waste Electrical and Electronic Equipment Regulations 2013 together with any other applicable subordinate legislation (the "Regulations").

1.2 In these Conditions (except where the context otherwise requires):

1.2.1 any words following the terms "including", "include", "for example" or any similar expression are by way of illustration and emphasis only and shall not limit the generality or extent of any other words or expressions; and

1.2.2 references to any legislation include any modification or re-enactment of that legislation and any subordinate legislation made (before or after the Contract is entered) under that legislation.

2. Basis of Contract

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

2.2 The Order constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted on the earlier of:

2.3.1 the Seller issuing a written acceptance of the Order; and

2.3.2 the Seller dispatching the Goods and/or performing the Services.

2.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance, or warranty made or given by or on behalf of the Seller which is not set

out in the Contract. All warranties, conditions, and other terms (whether express or implied) which are not set out in the Contract are (to the fullest extent permitted by law) excluded from the Contract.

2.4.1 The Order shall only be modified if agreed in writing between the parties. Should the Buyer wish to modify any of the terms of the Order, it shall request such modification in writing at least 15 Business Days before the Delivery Date and the request for modification shall only be approved upon issue of the Seller's written consent to the modification. Consent to any modifications shall be entirely at the Seller's discretion. The Seller shall be entitled to amend the Price to take account of any such modifications and the Buyer agrees to pay the amended Price.

2.5 A quotation for the Goods and/or Services given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 14 Business Days.

All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods and Services

3.1 The Goods and/or Services are described in the Specification. Any samples, drawings, descriptive matter, advertising or other documents and/or information produced by the Seller which do not form part of the Specification are for reference only and shall not form part of the Contract.

3.2 To the extent that the Goods and/or Services are to be manufactured and/or performed (as applicable) in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller by a third party. This clause 3.2 shall survive termination of the Contract.

3.3 The Seller reserves the right to amend the Specification if required by any applicable legal or regulatory requirements.

3.4 The Buyer shall comply in all respects with the Regulations when the Goods are discarded as WEEE (and otherwise as applicable) and shall be responsible for any liability incurred in respect of the Regulations (or otherwise in respect of WEEE).

3.5 The Seller may, for commercial reasons only, offer to remove WEEE when the Buyer is purchasing new Goods. This will be decided on a case-by-case basis and the Buyer acknowledges and accepts that it may be required to pay an increased Price if it chooses to have any applicable WEEE removed by the Seller.

4. Delivery

4.1 Unless otherwise set out in the Order, the Buyer shall arrange for the Goods to be collected from the Seller's premises (the "**Delivery Location**") either by the Buyer or by an agent or carrier appointed by the Buyer. The Buyer shall provide written confirmation to the Seller of the person collecting the Goods at least 2 Business Days prior to collection.

4.2 Delivery of the Goods shall be completed on the passing of the Goods to the Buyer at the Delivery Location.

4.3 Any dates quoted for delivery/collection of the Goods and/or performance of the Services are approximate only and time of delivery/collection and/or performance is not of the essence.

4.4 If the Seller agrees to deliver the Goods:

4.4.1 and fails to deliver the Goods to the Delivery Location, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods; and

4.4.2 it shall not be liable in respect of any damage in transit or for the Goods not arriving at the Buyer's premises where the Buyer has arranged for the Goods to be collected from the Delivery Location by an agent or carrier. The Seller shall not be required to take any action with either the Buyer or the agent or carrier to resolve the issue of non-delivery and/or damage to the Goods.

4.5 Where the Buyer requests that delivery/collection be postponed or any action of the Buyer means that delivery/collection is postponed, the Buyer shall be liable to pay to the Seller a storage charge calculated at cost plus an administration fee of 5% per day per item of Goods in relation to which delivery is postponed.

4.6 If the Seller's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("**Buyer Default**"):

4.6.1 without limiting or affecting any other right or remedy available to it, the Seller shall have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations.

- 4.6.2 the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 4.6; and
- 4.6.3 the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.
- 4.7 If the Buyer fails to take delivery or collect (as applicable) of the Goods within 3 Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Order:
- 4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00am on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and
- 4.7.2 the Seller shall store the Goods until delivery takes place and charge the Buyer for all related costs and expenses, including insurance.
- 4.8 Should the Goods require installation by the Seller, the Goods are deemed to be accepted by the Buyer, 3 days after the last installation visit, or 30 days from the first installation date, whichever occurs earliest. The Buyer accepts that subsequent support may incur costs.
- 4.9 If 10 Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods.
- 4.10 The Seller may deliver the Goods and/or perform the Services by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

5. Risk and Title

- 5.1 The risk in the Goods shall pass to the Buyer on the Buyer loading the Goods at the Seller's premises or if the Seller has agreed to deliver the Goods, risk shall pass to the Buyer on delivery.
- 5.2 Title to the Goods shall not pass to the Buyer until the Seller receives payment in full for the Goods and any other goods and/or Services that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 5.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
- 5.3.1 hold the Goods on a fiduciary basis as the Seller's bailee.
- 5.3.2 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property.
- 5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods.
- 5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the Delivery Date.
- 5.3.5 notify the Seller immediately if it becomes subject to any of the events listed in clause 11.3 and shall provide to the Seller at the Buyer's expense an inventory of the Goods it has in its possession. The Seller shall be entitled to collect any Goods the Buyer has in its possession at the Seller's convenience; and
- 5.3.6 give the Seller such information relating to the Goods as the Seller may require from time to time.
- 5.4 Where the Buyer fails to comply with clause 5.3, the Buyer shall, upon request by the Seller, return the Goods to the Seller at its own risk and expense.
- 5.5 The Buyer may resell the Goods before title has passed to it solely on the following conditions:
- 5.5.1 any sale will be affected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Seller; accordingly, and
- 5.5.2 any such sale will be a sale of the Seller's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.

6. Warranty

- 6.1 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.
- 6.2 Subject to clauses 6.3 and 6.4, the Seller may warrant that on delivery and for a period of 12 months from the Delivery Date (the "**Warranty Period**"), the parts that form the Goods shall:
- 6.2.1 conform in all material respects with their description and any applicable Specification; and

6.2.2 be free from material defects in design, material, and workmanship, unless such design, material and/or workmanship is as a result of instructions received from the Buyer,

(the "**Warranty**").

6.3 The Seller will notify the Buyer in writing if it is entitled to the Warranty and if no such notification is received by the Buyer, the Buyer shall not be entitled to make any claim under the Warranty.

6.4 The Seller shall not be liable for the goods' failure to comply with any Warranty to which the Buyer is entitled in accordance with clause 6.3 if:

6.4.1 the Buyer makes any further use of the Goods after giving notice in accordance with clause 6.5;

6.4.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commission, installation, use and maintenance of the Goods or (if there are none) good practice regarding the same.

6.4.3 the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer.

6.4.4 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions.

6.4.5 the Buyer or a third party alters or repairs the Goods without the written consent of the Seller; or

6.4.6 the claim relates to glass parts and/or refrigerating fluids.

6.5 Subject to clause 6.3, if:

6.5.1 the Buyer gives notice in writing to the Seller during the Warranty Period and within a reasonable time of discovery that a part or parts of the Goods do not comply with the Warranty.

6.5.2 the Seller is given a reasonable opportunity of examining such part or parts; and

6.5.3 the Buyer (if asked to do so by the Seller) returns such part or parts to the Seller's place of business at the Seller's cost unless otherwise agreed in writing between the parties,

the Seller shall, at its option, repair or replace the defective part or parts of the Goods.

6.6 Except as provided in this clause 6, the Seller shall have no liability to the Buyer in respect of the goods' failure to comply with the Warranty.

6.7 The terms and conditions implied by sections 13 to 15 of the Sale of Goods Act 1979 and by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Order and these Conditions.

6.8 These Conditions shall apply to any repaired or replacement part or parts of the Goods supplied by the Seller.

7. Liability

7.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

7.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable).

7.1.2 fraud or fraudulent misrepresentation; or

7.1.3 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

7.2 Subject to clause 7.1:

7.2.1 the Seller shall not be liable whether in contract, tort (including negligence and breach of statutory duty), misrepresentation, restitution or otherwise for: any loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, or any special, indirect consequential or pure economic loss, costs, damages, charges or expenses; and

7.2.2 the Seller's total liability arising under or in connection with the performance or contemplated performance of the Contract, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall in no circumstances exceed the Price received by the Seller from the Buyer as payment of the Goods and/or Services under the relevant Order.

8. Force Majeure

- 8.1 Neither party shall be in breach of these Conditions nor liable for delay in performing or failure to perform any of its obligations under the Conditions if such delay or failure results from events, circumstances or causes beyond its reasonable control, including but not limited to government intervention, official strikes, acts of God, natural disasters, fire or flood (a "**Force Majeure Event**"). If such delay in performing or failure to perform continues for more than 20 Business Days, the non-defaulting party may terminate the Conditions and / or any Order thereunder.

9. Price

- 9.1 The price of the Goods and/or Services shall be the price set out in the Order, or, if no price is quoted, the price set out in the Seller's published price list in force at the date of the Seller's written acceptance of the Order (the "**Price**").
- 9.2 The Seller may, by giving notice to the Buyer at any time up to 14 Business Days before delivery, increase the Price to reflect any increase in the costs of the Goods and/or Services that is due to:
- 9.2.1 any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs).
 - 9.2.2 any request by the Buyer to change the Delivery Date(s), quantities or types of Goods and/or Services ordered, or the Specification; or
 - 9.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 9.3 Subject to clause 9.4, the Price is exclusive of the costs and charges of packaging, insurance and transport of the Goods which shall be payable by the Buyer.
- 9.4 Where the parties agree in writing that the Price will include transport costs, the Seller shall invoice the Buyer separately for any transport costs over and above reasonable transport costs and/or for a fixed sum where the Buyer has placed an Order of between one to three cabinets or equivalent items.
- 9.5 The Buyer acknowledges and accepts that where the Buyer suffers an Insolvency Situation, the Seller reserves the right to cancel any discounts of the Price previously offered to the Buyer, whether or not such discount is set out in the Order or elsewhere.

10. Payments

- 10.1 The Seller may invoice the Buyer for the Goods at any time after delivery.
- 10.2 The Buyer shall pay the invoice in full and cleared funds within 30 days of the end of the month in which the invoice is dated, unless otherwise agreed in writing between the parties. Payment shall be made to the bank account nominated in writing by the Seller from time to time.
- 10.3 Time of payment is of the essence.
- 10.4 If the Buyer fails to make any payment due to the Seller by the due date for payment, then any discount, special offer or other price reduction that was offered by the Seller to the Buyer shall be withdrawn and, where relevant, the Seller shall invoice the Buyer for the amount outstanding as a result of the withdrawal of the discount, special offer or other price reduction (as applicable). The Buyer shall also pay interest on the overdue amount at the rate set in the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 10.5 Where payment in relation to one Order is overdue, all sums due from the Buyer to the Seller under any Order shall become immediately payable, regardless of any previously agreed terms. Where payment by instalments has been agreed between the parties and the Buyer fails to pay one instalment, all instalments shall automatically become immediately payable.
- 10.6 Where the Buyer fails to make payment on the due date, the Seller shall be entitled to cancel the Order and any other orders placed by the Buyer, including those for which payment has already been received. The cancellation shall take effect within 5 Business Days of notification by the Seller (such notification being sent by recorded delivery) to the Buyer of the cancellation. In the case of such cancellation, the Buyer shall immediately return the Goods in its possession at its own risk and expense to the Seller, and the Seller shall be entitled to suspend or cease the performance of the Services.
- 10.7 The Buyer shall not be entitled to:
- 10.7.1 suspend payments due to the Seller.
 - 10.7.2 set off any amounts due from the Buyer to the Seller against any amounts due from the Seller to the Buyer; or

10.7.3 make any advance payments to the Seller,
without prior written consent of the Seller.

10.8 The Seller shall be entitled to set off any amounts due from the Seller to the Buyer against any amounts due from the Buyer to the Seller, irrespective of whether such amount due from the Seller is present or future, liquidated or unliquidated and whether or not it arises under these Conditions.

11. Termination and Suspension

11.1 Where the Buyer fails to comply with any obligations under these Conditions, the Seller shall be entitled to cancel the Order and any other orders placed by the Buyer, including those for which payment has already been received. The cancellation shall take effect within 5 Business Days of notification by the Seller (such notification being sent by recorded delivery) to the Buyer of the cancellation. In the case of such cancellation, the Buyer shall immediately return the Goods to in its possession at its own risk and expense to the Seller.

11.2 If the Buyer becomes subject to any of the events listed in clause 11.3, the Seller may terminate the Order and/or these Conditions with immediate effect by giving written notice to the Buyer.

11.3 For the purposes of clause 11.2, the relevant events are:

11.3.1 the Buyer suffers an Insolvency Situation.

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

11.3.3 the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

11.3.4 (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

12. Intellectual Property Rights

12.1 The Seller does not guarantee that the Goods and/or Services will not infringe the intellectual property rights of a third party and the Seller shall in no event be liable, whether directly or indirectly, for any direct or indirect consequences of claimed or proven infringements of third-party intellectual property rights in respect of the Goods and/or Services.

13. Confidentiality

13.1 The studies, documents, data and information communicated and/or provided by the Seller to the Buyer or being brought to the Buyer's knowledge as a result of the Order shall remain, unless stipulated otherwise, the property of the Seller, and shall be returned to the Seller by the Buyer upon request.

13.2 All the above-mentioned documents must be considered as confidential and cannot be communicated to other persons, other than to persons authorised in writing by the Seller.

14. Anti-Bribery and Modern Slavery

14.1 Both parties shall, and shall procure that any persons associated with them shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and the Modern Slavery Act 2015.

15. Assignment and Other Dealings

15.1 The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

16. Notices

16.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or fax.

16.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

16.3 The provisions of this clause 16 shall not apply to the service of any proceedings or other documents in any legal action.

17. Severance

17.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 17 shall not affect the validity and enforceability of the rest of the Contract.

18. Waiver

18.1 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. Third Party Rights

19.1 A person who is not a party to the Contract shall not have any rights to enforce its terms.

20. Variation

20.1 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Seller.

21. Governing Law and Jurisdiction

21.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and the parties agree to submit to the exclusive jurisdiction of the courts of England.