

TERMS AND CONDITIONS FOR THE PROVISION OF GOODS AND SERVICES

These are the terms on which Enviro Technology Services Ltd (Company Number 1726773) whose registered address is at Kingfisher Business Park, London Road, Stroud, Gloucestershire, GL5 2BY ('Company') do business.

1. DEFINITIONS

1.1 In these Conditions, unless the context requires otherwise, the following expressions have the following meanings:

"**Customer**" means you, the body corporate (which includes a LLP), partnership or individual obtaining Goods or Services from the Company and shall include its successors in business and permitted assigns.

"**Company**" means Enviro Technology Services Ltd (Company Number 91726773) whose registered address is at Kingfisher Business Park, London Road, Stroud, Gloucestershire, GL5 2BY which expression shall include its successors in business and assigns.

"**Conditions**" means these terms and conditions.

"**Contract**" means any contracts made between the Company and the Customer for the sale and purchase of Goods and/or performance of Services which arises from acceptance by the Company of any Orders placed by the Customer.

"**Delivery**" means the delivery of the Goods and/or services as set out in Clauses 6.1 and 6.3.

"**Goods**" means any products, articles or items which the Company sells to the Customer as specified in the Order. The term Goods shall include Software save where the context requires otherwise.

"**Intellectual Property**" means patents, trade marks or names (whether or not registered or capable of registration), registered designs, design rights, copyright, moral rights, data base rights, the right to apply for any of the preceding items, together with rights and inventions, processes, know how, trade or business secrets, confidential information or any process or other similar right or asset capable of protection.

"**Order**" means any order (whether in writing or otherwise) for Goods and/or Services made by the Customer to the Company including and order made on the Company's order form.

"**Parties**" mean the Company and the Customer.

"**Price**" means the price payable for the Goods and/or Services as specified in the relevant quotation or Order (whichever is the highest).

"**Services**" means any services which are requested by the Customer under an Order (excluding support and maintenance which shall be governed by a separate agreement).

"**Software**" means software (owned by the Company or those of which the Company is licenced to sub-license to the Customer) which the Company shall supply to the Customer under a Contract. Subject always to the foregoing and for the avoidance of doubt, software shall include any software or firmware imbedded and/or included in Goods.

"**Writing**" means facsimile transmission and by post and "Written" shall be construed accordingly.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or

extended at the relevant time.

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

1.4 In these Conditions, references to the masculine include the feminine and the neuter and reference to the singular include the plural and vice versa as the context admits or requires.

1.5 No Contract shall create any agency or partnership between the Parties or third party.

2 BASIS OF SALE

2.1 Any quotations and/or estimates given by the Company shall be deemed as an 'invitation to treat' and not an offer. Any Order made by the Customer which is received by and/or brought to the attention of the Company shall constitute an irrevocable offer capable of being accepted by the company.

2.2 The Company may accept any Order by written acceptance or by supplying the Customer with the Goods and/or performance of the Services specified or requested in the relevant Order. For the avoidance of doubt, where an Order is placed orally or in the event of any dispute as to the Order, the Company's version of the Order shall be deemed as the authoritative Order and the Customer shall not dispute the correctness of the same.

2.3 These Conditions shall apply to, and shall be part of each Contract to the exclusion of any terms and conditions of the Customer unless such terms are accepted in Writing by the Company.

2.4 No variation to the Contract shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Company.

3 DRAWINGS

All drawings, dimensions, specifications, descriptions and illustrations contained in any sales literature and price list are approximates only and shall not form part of the Contract.

4 PRICE OF THE GOODS AND SERVICES

4.1 A Quotation given by the Seller is valid for 30 days only unless otherwise stated by the Company.

4.2 Where at any time before delivery of the Goods or Services, there is an increase in the cost of the Goods or Services to the Company due to any factor beyond the control of the Company (such as but without limitation, foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) the Company may adjust the price accordingly.

4.3 The Customer shall pay the Company the Price for the Goods and/or Services (as the case may be) pursuant to Clause 5 and unless otherwise so stated, the Price shall be:

4.3.1 exclusive of VAT and any other tax which where applicable shall be payable by the Customer in addition to the Price; and

4.3.2 exclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods, and any duties, imports or levies, which, where applicable,

shall be payable by the Customer in addition to the Price.

4.4 No payment for the Goods and/or Services shall be deemed to have been received until the Company has received cleared funds.

5 TERMS OF PAYMENT

5.1 The Company may invoice the Customer:

5.1.1 on (or after) the date the Company has notified the Customer that the Goods are ready for collection when the relevant Contract provides that the Goods are to be collected by the Customer from the premises of the Company; or

5.1.2 on (or after) the date of dispatch of the Goods to the agreed point of delivery when the relevant Contract provides that the Goods are to be delivered to such place by the Company.

5.2 The Company shall be entitled to invoice the Customer for the performance of the Services on completion of the Services or at the end of each calendar month in respect of Services rendered under the relevant Contract during such calendar month (whichever is the earlier).

5.3 Unless otherwise agreed in Writing by an authorised representative of the Company, the Customer shall pay the Company's invoices in full without any deduction whether by way of set off, counterclaim or otherwise within 14 days of the date of the Company's invoice where prior credit arrangements have been agreed between the Parties in Writing. Where no prior credit arrangement has been agreed, the Customer shall make payment when an Order is placed.

5.4 If payment is not made on the due date, the Company shall (at its sole discretion) be entitled:

5.4.1 to cancel the contract or suspend any further deliveries to the Customer;

5.4.2 appropriate any payment made by the Customer to such of the Goods or Services (or the Goods or Services supplied under any other contract between the Company and the Customer) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and/or

5.4.3 without limiting any other rights set out in this Clause or it may have, to charge interest on the outstanding amount (both before and after any judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 with such interest to accrue on a daily basis from the due date until the outstanding amount is paid in full.

5.5 No partial payment expressed to be "in full and final settlement" shall be effective as such unless specifically agreed in Writing by the Company.

6 DELIVERY

6.1 The Goods shall be delivered ('Delivery') to the Customer:

6.1.1 by the Customer collecting the Goods from the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection; or

6.1.2 by the Company delivering the Goods to such location as the Customer specifies in the Order.

6.2 Where Clause 6.1.2 applies, the Company shall carry out such Delivery using reasonable endeavours and the

Company shall be entitled to charge additional Delivery charges if the Company is unable to affect delivery due to any fault of the Customer.

6.3 In the case of Services, delivery ('Delivery') shall be deemed upon commencement of the Services and such Services shall be performed at the Customer's registered address or such alternative address as may be set out in the Order. The Company shall be entitled to sub-contract the performance of the Services.

6.4 The Customer acknowledges that any dates for delivery of Goods and/or performance of Services are estimates only. Accordingly, the Company shall have no liability in the event of any delays.

6.5 The time of supply or delivery of the Goods and/or performance of the Services shall not be of the essence.

6.6 The Customer shall be deemed to have accepted the Goods upon Delivery unless the Company is notified in Writing within 7 days from the date of Delivery by the Customer that the Goods are materially damaged, defective or where the quantity supplied is incorrect. In such a case, the Company shall, at its sole option (and as the Customer's sole and exclusive remedy), replace or repair any such Goods or part thereof which (have been proven to the Company's reasonable satisfaction) to have been damaged prior to the time of Delivery.

6.7 Subject to Clause 6.6, if the Customer refuses or fails to take delivery of the Goods and/or accept the performance of the Services, then, without prejudice to any other rights the Company may have against the Customer (for breach of contract or otherwise):

6.7.1 the Company shall be entitled (notwithstanding that title to the Goods may not have passed) to the immediate payment in full for the Goods and/or Services so tendered;

6.7.2 the Company shall be entitled to effect Delivery of the Goods by whatever means it considers most appropriate or to store those Goods at the risk and cost of the Customer; and/or

6.7.3 the Company shall be entitled to withhold performance of the Services

and the Customer shall, in addition to the Price, pay all such additional costs incurred as a result of such refusal or failure to accept Delivery of the Goods and/or Services (as the case may be).

6.8 Without prejudice to Clause 5.4, where the Price has not been paid, the Company shall be entitled, after the expiration of 1 month from the date upon which it first tendered the Goods for Delivery, to dispose of the Goods in such manner as the Company may determine and shall be under no duty to account to the Customer for any of the proceeds of such disposal.

7 RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Customer upon Delivery.

7.2 Whether title in the Goods shall pass shall be determined by the following terms:

7.2.1 Title in the Goods shall pass, subject to Clause 7.2.2 below, to the Customer upon full payment for the Goods.

7.2.2 Where the Goods include software, title to the software shall not pass to the Customer and the software shall be licensed to the Customer in accordance with Clause 14 or in accordance with the software licence terms of the relevant third party software vendor (whether on-

screen, shrink wrap, web wrap or otherwise).

7.3 Until such time as title in the Goods have passed to the Customer:

7.3.1 the Company shall be entitled to repossess at any time any of the Goods in which title remains vested in the Company;

7.3.2 for the purpose specified in Clause 7.3.1 above, the Company or any of its agents or authorised representatives shall be entitled at any time and without notice to enter upon any premises in which the Goods or any part thereof are installed, stored or kept, or are reasonably believed to be to retrieve the Goods; and

7.3.3 the Company shall be entitled to seek a court injunction to prevent the Customer from selling, transferring or otherwise disposing of the Goods;

7.4 Until such time as title in the Goods has passed to the Customer, the Customer shall, subject to the Company's rights hereunder, keep the Goods separate from other Goods fully insured (for the benefit of the Company) and hold the Goods as the Company's fiduciary agent.

8 WARRANTIES AND LIABILITY

8.1 Subject to Clause 8.5, the Company warrants to the Customer that:

8.1.1 any Goods (excluding any software) manufactured by the Company will be substantially free from defects in materials and workmanship and will conform to a substantial degree to any specifications agreed between the Parties in Writing at the date of the relevant Contract for a period of 12 months after the date of Delivery ("Warranty Period") unless otherwise agreed in Writing by the authorised representative of the Company.

8.1.2 the Software will conform to a substantial degree to any specifications agreed between the Parties in Writing at the date of the Contract for a period of 3 months after the date of Delivery, although the Company does not undertake that such Software will be uninterrupted or error free;

8.1.3 the Services will be performed by appropriately qualified and trained personnel, with the reasonable skill and care generally employed in the industry in the United Kingdom in respect of the performance of similar services; and

8.1.4 the Company will use its reasonable endeavours to pass on any manufacturer's warranty to the Customer in respect of any Goods and/or software not manufactured and/or developed by the Company.

The warranty described in this clause shall be defined as the 'Limited Warranty'. To the maximum extent permitted by law all other warranties and conditions implied, including without limitation any conditions of quality, merchantability or fitness for a particular purpose with respect to the use of the Goods or performance or non-performance of the Services are excluded.

8.2 The Company will be liable to the Customer in respect of any claim arising from injury to or death of any person where and to the extent that the injury or death is caused by negligence on the part of the Company.

8.3 Subject to Clauses 8.2, 8.4 and 8.5, the Company's entire liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of a Contract shall be limited to:

8.3.1 in respect of matters for which the Company does not carry insurance, the Price; and

8.3.2 in respect of matters for which the Company carries insurance, the insured value.

8.4 Subject to Clause 8.2, in no event shall the Company be liable for any losses and damages suffered by the Customer including (but not limited to) any direct or indirect, incidental loss, consequential loss, wasted or lost management time, lost profits, goodwill, savings or other economic loss and/or loss of data arising from or relating to any Contract or the use of the Goods or performance or non-performance of the whole or part of the Services, or breach of statutory duty, even if the Company has been advised of the possibility of such loss.

8.5 Specifically, the Limited Warranty in Clause 8.1 does not cover failures of the Goods which result from accident, abuse, misuse, alterations (by persons other than the Company or its authorised repair agents), moisture, corrosive environments, high voltage surges, or abnormal working conditions. The Limited Warranty does not cover normal wear and tear.

8.6 If the Customer needs to make a claim under the Limited Warranty within the Warranty Period, the Customer must inform the Company in Writing prior to returning the Goods to the Company. The Company will inform the Customer as to whether the Customer's claim is valid and, if so, the Company will provide Return Authorisation (RA) number and details of where (and how) to return the Goods. Any Goods should be returned with the RA number clearly marked on the outside of the packaging securely packed in a rigid container with ample cushioning material, preferably with the original packaging. All defects should be clearly described and specified in Writing. The Goods returned shall be shipped prepaid to the Company. The Company will not accept any Goods returned to it where this procedure is not followed.

8.7 The Company reserves the right to charge the Customer on a time and materials basis at its then current rates if the Customer's warranty claim under Clause 8.6 is found not to be a valid claim.

9 TERMINATION

9.1 Either Party shall be entitled to terminate the relevant Contract without liability to the other by giving notice to the other at any time if:

9.1.1 the other Party makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);

9.1.2 an encumbrancer takes possession of any of the property or assets of the other Party, or a receiver is appointed;

9.1.3 the other Party takes or suffers any similar or analogous action set out in Clause 9.1 in any jurisdiction in consequence of debt; or

9.1.4 the other Party ceases, or threatens to cease, to carry on business.

9.2 Without prejudice to Clauses 6.7 and 6.8, the Company may suspend or terminate the relevant Contract at any time by giving not less than 28 calendar days written notice in the event that the Customer without due cause fails to pay any amounts due to the Company by the due date or breaches any material warranty or other

material term of such Contract and fails to remedy such non-payment or breach within the 28 calendar day notice period.

9.3 Except where the Company is in material breach of its obligations, any termination of the whole or part of the relevant Contract shall result in the automatic termination of any software licence pursuant to which Software is supplied to the Customer by the Company.

10 CANCELLATIONS

10.1 Without prejudice to Clause 8.5, no cancellations of Orders shall be permitted unless agreed in advance by an authorised representative of the Company and may be subject to a reasonable cancellation and re-stocking charge.

10.2 Without prejudice to Clause 6.6, upon Delivery, the Goods may not be returned unless agreed in advance by an authorised representative of the Company provided always that:

10.2.1 the Goods are brand new and in unused condition;

10.2.2 the packaging of the Goods remain intact and unbroken and in reasonable condition; and

10.2.3 the returned Goods are received within 14 days from when the authorised representative of the Company agreed to accept the returned Goods.

11 GENERAL

11.1 Subject to any other provisions in these Conditions, neither Party may assign its rights under any Contract without the permission of the other; such permission shall not be unreasonably withheld or delayed. The Company may sub-contract any of its obligations under any Contract if such action does not materially affect the performance of the relevant Contract.

11.2 Any notice required or permitted to be given by either Party to the other under a Contract shall be in Writing addressed to that other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice.

11.3 No waiver by the Company of any breach of a Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. Any waiver by the Company shall only be effective if in Writing expressly waiving the provision in question.

11.4 If any provision of these Conditions is held by any 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 thereby.

11.5 The Company shall be under no liability to the Customer in respect of anything which, apart from this provision, may constitute breach of any Contract arising by reason of force majeure, namely circumstances beyond the reasonable control of the Company which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, Accident, embargo, riot, civil commotion including acts of local government and parliamentary authority; shortage of supplies (but not lack of funds), utilities, equipment,

materials, breakdown or shortage of equipment and labour disputes of whatever nature and for whatever cause arising.

11.6 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall neither apply to these Conditions nor to any Contract. In particular but without limitation any warranties given in a Contract are for the benefit of the Customer only. Where the Customer is a re-seller the Customer is responsible for dealing with any warranty or other claims from its customers and shall keep the Company fully indemnified in this regard.

11.7 To the extent permitted by law, the Customer shall defend and indemnify the Company from any and all claims brought against the Company by third parties, and shall hold the Company harmless from all corresponding damages, liabilities, costs and expenses, (including reasonable lawyers fees) incurred by the Company arising out of or in connection with the Customer's possession, use or distribution of the Goods except in the event of breach of a third party's intellectual property rights where the terms of Clause 15 shall apply.

11.8 The Parties agree that to the extent permitted by law, the Vienna Convention of 1980 ("The Convention on Contracts for the International Sale of Goods") and all international and domestic (or other) implementations of that Convention shall not apply in relation to the Contract.

11.9 These Conditions and any Contract shall be governed and construed in accordance with the laws of England (including as to validity and enforcement) and the parties submit to the exclusive jurisdiction of the English courts.

11.10 These Conditions (and where applicable construed together with the Contract) shall constitute the entire agreement between the Parties with respect to its subject matter and (except in the case of fraud) supersedes all warranties, promises and representations or other assurances.

12 CONFIDENTIALITY

The Customer agrees to keep in confidence all technical and/or commercial information pertaining to the Goods and/or Services and not to disclose or use such information except for the purposes authorised under this Conditions and/or Contract. The Customer shall take all reasonable steps to ensure that its employees observe this obligation. This Clause shall survive the termination of Contracts entered into between the Parties.

13 COMPLIANCE WITH LAW

The Customer will comply with all laws, rules and regulations ("Law") applicable to its purchase and use of the Goods and Services including without limitation the Data Protection Act 1998. The Customer shall on request provide the Company with reasonable assistance to enable the Company to comply with applicable Law.

14 SOFTWARE LICENCE

14.1 The Company hereby grants to the Customer a non-exclusive and non-transferable licence to load and to use the Software in object code and only on the Customer's equipment and for the sole purpose of the Customer's internal use and/or to use the Software in conjunction with the Goods or Services provided under a Contract. Any Software (including new versions, enhancements and/or modifications) provided to the Customer by the Company subsequent to the relevant Contract shall be subject to the terms of this license

unless other terms are agreed between the Parties in Writing.

14.2 With regard to third party software that the Company is not entitled to licence to the Customer, the third party's software licence terms shall apply and the Customer undertakes to comply with such terms.

14.3 Except to the extent permitted by law or permitted under a Contract, the Customer shall not alter, modify, adapt or translate the whole or any part of the Software, nor combine or incorporate the Software with other programs, nor to decompile, disassemble or reverse engineer the Software or any part thereof.

14.4 The Customer will not without the Company's prior Written consent, copy or enable others to copy the Software or enable others to use unlicensed copies of the Software.

14.5 In the event that any enhancement or modification of the Software is made during the performance of or as a result of any Contracts, any present or future Intellectual Property rights in such enhancement or modification shall be owned by the Company and the Customer shall assign such Intellectual Property rights to the Company.

15 INFRINGEMENT OF THIRD PARTY RIGHTS

15.1 Should any claim be made against the Customer alleging that any Goods, Software or their use by the Customer infringes Intellectual Property rights of such claimant, the Customer shall promptly notify the Company in writing with full particulars. Provided that the Customer (1) so notifies the Company; (2) makes no admission; (3) allows the Company the exclusive right of deciding whether the claim shall be defended and whether any attempt shall be made to settle it; and (4) also allows the Company exclusive control of all litigation and negotiations, the Company will indemnify the Customer in respect of all liability imposed on the Customer by a court order or arbitration award.

15.2 If the Customer is unable to continue using the allegedly infringing Goods and/or Software because the Company neither defends the claim successfully nor procures at its own expense the right for the Customer to continue using them (unless the Company elects at its own expense either to modify the Goods and/or Software so that they become non-infringing or to replace them with non-infringing items without in either case detracting from overall performance) the Company will accept the return of the Goods and/or Software, the title of the Goods (excluding software) in which shall thereupon revert in the Company. The Company will repay the Customer the Price paid less one-eighth of that price for each complete period of six months reckoned from the date which the Customer shall have been able to use the Goods.

15.3 Clause 15.1 shall not apply and the Company shall be under no liability if a claim for Intellectual Property infringement is based on any software or hardware supplied by the Company which the Company does not own the Intellectual Property rights to and/or is lawfully licensed to use and/or sub-license the same.

15.4 Clauses 15.1 and 15.2 set out the full extent of the Company's liability in respect of Intellectual Property infringement.

16 INTELLECTUAL PROPERTY RIGHTS

The Customer acknowledges that all Intellectual Property rights in the Goods, Services, software (including

Software) supplied under this Conditions and/or Contract shall not be transferred to the Customer but shall remain vested with the respective Intellectual Property rights owners.