

## **ECMS SERVICES LIMITED: Terms & Conditions**

### **1. DEFINITIONS.**

- 1.1 ECMS LIMITED: ECMS Services Ltd, The Cottage, Hartley Bottom Road, Hartley, Longfield, Kent, DA3 8LF
- 1.2 THE CLIENT: the organisation or persons who purchase the services from ECMS LTD as specified in the Contract Specification.
- 1.3 THE SERVICES: the professional services provided by ECMS LTD to the client as detailed in the Contract Specification.
- 1.4 THE AGREEMENT: these Terms and Conditions together with any terms within any Contract Specification.

### **2. GENERAL.**

- 2.1 These Terms and Conditions shall apply to all and any contracts for the supply of Goods and Services by ECMS LTD to the Client.
- 2.2 Any variation to these Terms and Conditions (including any special Terms or Conditions agreed by the parties) shall be inapplicable unless agreed in writing by the Director of ECMS LTD.
- 2.3 In the Agreement any references to the statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 2.4 In these Terms and Conditions headings will not affect the construction of these Terms and Conditions.
- 2.5 This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to this subject matter hereof, whether oral or written.
- 2.6 Nothing in this Agreement is intended to, nor shall, confer any rights on a third party unless expressly provided otherwise.
- 2.7 ECMS LTD shall provide the Services with reasonable care and skill and in accordance with good industry standards.
- 2.8 The rights of the Company or the buyer shall not be prejudiced or restricted by any indulgence of forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

### **3. QUOTATION.**

- 3.1 All quotations are valid for 30 days from the quote created date.
- 3.2 Quote includes site-specific RAMs to be submitted prior to works.
- 3.3 Any further works requested/required other than detailed above will be quoted separately or can be carried out on a pre-agreed time and material basis. Variations will require written instruction from the client prior to commencement.

### **4. DURATION, TERMINATION AND NOTICES.**

- 4.1 ECMS LTD agrees to provide the named Services to the Client in accordance with the; QUOTATION / PRICING SCHEDULE provided.
- 4.2 If entering a service Contract, then this will be agreed as the following; A ROLLING CONTRACT REVIEWED ANNUALLY.

- 4.3 The Client may terminate the Agreement upon giving ECMS LTD 90 days dated notice (signed for registered post /e mail or facsimile will be accepted). In the event of no such notice being given, then the Client shall agree to pay ECMS LTD a sum equivalent to the notice period.
- 4.4 ECMS LTD reserves the right to withdraw the Services and/or terminate the Agreement at any time providing the Client with 60 days written notice.

## **5. CHARGES, INVOICING AND PAYMENT.**

- 5.1 A contract for the supply of Services or Goods will only be formed when ECMS LTD confirms acceptance of the Client's contract/order.
- 5.2 Invoices for the Services provided will be submitted monthly in arrears and are due for payment 30 days thereafter.
- 5.3 Overdue accounts will incur a 1.5% penalty interest on the outstanding balance.
- 5.4 Invoices which the Client wishes to dispute must be reported to ECMS LTD, in writing at the address listed within this Agreement within 30 days of receipt. Where the dispute concerns either; Failure to perform the Service / Unsatisfactory performance of the service notice to ECMS LTD must be provided within 48 hours of the occurrence.
- 5.5 All charges are exclusive of Value Added Tax, which may be subject to any change in government legislation.
- 5.6 The Client shall pay all money due under the Contract without any discount, deduction, set off, or counterclaim regardless of any claim or dispute which the Client has or alleges to have against ECMS Services Ltd.
- 5.7 Failure by the Client to pay the undisputed Charges within 60 days of the due date or to comply with any of its other obligations under the Contract shall constitute sufficient cause for ECMS LTD to suspend or terminate service under the Contract until the Charges have been paid in full and the Client's other obligations have been complied with in full.
- 5.8 Statutory charges will be made in relation to the preparation and retention of legal documents confirming the safe and authorised disposal of your office waste.
- 5.9 ECMS LTD may increase the Charge by giving 30 days 'prior written notice. No such charge shall be made within the initial 12 months of this agreement, with the exception of all legislative changes that have an impact on all relevant charges and taxes.
- 5.10 Any works carried out on a UK Public Holiday will be charged at twice the hourly contracted rate – if applicable.
- 5.11 Notwithstanding any agreed terms of payments, goods, materials, plant and machinery are not sold and delivered on credit, but on condition that ownership therein shall not pass to the Purchaser until it is fully paid for and all good, materials, plant and machinery whether incorporated in some larger assembly or not shall remain our Property until the whole purchase price has been paid in default of payment within thirty days of due date and in the manner herein provided we shall be entitled to cancel the contract and remove them and for that purpose we shall be deemed to have the Customer's full consent and authority to enter upon the premises where such goods, materials, plant and machinery may then be. Any instalments of purchase money which may have been paid shall be retained by us for our own use by way of liquidated damages.
- 5.12 Notwithstanding the provision stated herein all goods, materials, plant and machinery delivered to the clients premises, are at the Purchasers risk and must be paid for, notwithstanding the destruction thereof or any damage thereto however caused (other than damage occasioned by the act or default of our Employees, in which case our liability shall be limited to reinstating the damage so occasioned).
- 5.13 The Purchaser shall, upon delivery, insure in the joint names of the Purchaser and ourselves until completion of payment for all goods, materials, plant and services comprised in the quotation.
- 5.14 All equipment & materials supplied by ECMS Services Limited remain the property of ECMS Service Limited until they are paid for in full.

## **6. VARIATIONS TO THE SERVICES.**

- 6.1 Variations to the Services / Goods to be provided by ECMS LTD under this Agreement must be agreed by the Director of the Authorised Representative of ECMS LTD. Any other variation will not be binding by ECMS LTD.
- 6.2 All variations to the Services / Goods must be confirmed in writing and signed by the Director of ECMS LTD or the Authorised Representative of ECMS LTD and the Client no later than 7 days after the date on which the variation becomes effective.

## **7. CLIENT RESPONSIBILITIES.**

- 7.1 The Client shall co-operate with ECMS LTD in order to enable ECMS LTD to perform its obligations under this Agreement and in particular shall:
  - 7.1.1 Obtain all necessary permissions and consents that may be required for the performance of the Services.
  - 7.1.2 Ensure that accurate information is supplied to ECMS LTD
  - 7.1.3 Comply with such requirements as may be set out in the Contract Specification or otherwise agreed by the parties.
- 7.2 The Client shall be liable to compensate ECMS LTD for any expenses incurred or losses suffered by ECMS LTD as a result of a failure of the Client to comply with any part of Clause 7.1.
- 7.3 The Client shall warrant that the premises are safe for work and comply with all Statutory Requirements for the Health and Safety of the employees of ECMS LTD. Under no circumstance will ECMS LTD permit their employees to work in an environment which ECMS LTD considers that there may be a risk of exposure to undue risk or danger. The Client shall remain liable for any charges due for the Services during any such period of suspension.

## **8. HEALTH AND SAFETY.**

- 8.1 ECMS LTD treats the Health and Safety of its employees, contractors with the upmost importance. ECMS LTD will undertake a full site survey and specification prior to contract commencement which will include Risk Assessments, completion of Method Statements and will ensure all necessary Health and Safety documentation is held on site and is reviewed and up to date.
- 8.2 ECMS LTD will ensure that all its employees are fully trained and familiar with the contents of all Health and Safety documentation.
- 8.3 Window cleaning charges are submitted on the assumption that all areas are safely accessible. Safe working practices will be adopted at all times.
- 8.4 The Client will advise ECMS LTD of any changes made to the premises which will affect or impact the delivery of the Services.

## **9. ACCOUNT MANAGEMENT.**

- 9.1 ECMS LTD Standard Operational Procedures apply to the monthly Quality Assurance Assessment by the Account manager utilising SLA and KPI monitoring process.

## **10. INDEMNITY.**

- 10.1 The Client shall indemnify ECMS LTD for any losses incurred by ECMS LTD as a result of investment by ECMS LTD in vehicles, equipment, manpower or any other goods or services to perform the Services or supply the Goods in consequence of the formation of this Agreement where the Client cancels or varies this Agreement.

- 10.2 The Client shall indemnify ECMS LTD in respect of any direct loss incurred by ECMS LTD in the performance of the Services and or supply of Goods in consequence of any negligent act or omission committed by any person or organisation acting on behalf of the Client.
- 10.3 ECMS LTD shall indemnify the Client in respect of any direct loss incurred by the Client in consequence of any negligent act or omission committed by any person or organisation acting on behalf of ECMS LTD in the normal course of the performance of the Services on behalf of the Client.

## **11. LIMITATION OF LIABILITY.**

- 11.1 ECMS LTD cover: Employers and Public Liability Insurance with an indemnity limit of £10m.
- 11.2 ECMS LTD shall not be liable for any loss caused by any act or omission of any employee of ECMS LTD where that employee was not acting in the normal course of performance of the Services or supply of Goods.
- 11.3 ECMS LTD shall not be liable for any indirect or consequential loss suffered by the Client due to a breach of this Agreement by the Client.
- 11.4 The liability of ECMS LTD to the Client under this Agreement shall be limited to any direct loss suffered by the Client as a result of the negligent performance of the Services or supply of Goods and only where the Client notifies ECMS LTD of the negligent act or omission in question within 7 days of the date when the Client became, or should reasonably have been, aware of that act or omission.

## **12. DAMAGES.**

- 12.1 Any claim for damages during works will not be considered by the Company unless an appropriately qualified signature e.g. Damages Caused (signed) is clearly made by the Customer on the job sheet AND Photographic evidence required for proof of damages AND The Company is advised in writing in addition to (a) above, within three days of occurrence.
- 12.2 Failing such notice within the said period the works shall be deemed to be in all respects in accordance with the contracts and shall be so deemed notwithstanding that the Company may afterwards, have entered into discussion and/or negotiations with the Buyer in reference with the Buyer in reference to the works.
- 12.3 Should it be found after notice as aforesaid that any works were not in accordance with the contract, the liability of the Company shall be limited to the rescheduling of such works (a reasonable time being allowed therefore) or at the option of the Company repayment of the price for them.
- 12.4 The Company shall not be liable for loss or profit, damage to plant, or for any expenditure incurred on goods/works supplied or any consequential or special loss or damage sustained by the Buyer by reason of any breach of the contract by the Company or as a result of any condition of warranty implied by law as to the fitness of any particular purpose of the goods/services.
- 12.5 The Buyer shall not be entitled to withhold payment of any sums due to the Company by reason of any disputed claim of the Buyer, nor shall the Buyer be entitled to set off against any sums under the contract, any monies which are not then presently payable by the Company.

## **13. FORCE MAJEURE.**

- 13.1 Neither party shall be entitled to damages from the other party, or to terminate this Agreement where the other party acts in default or material breach of this Agreement where that default or breach was caused by conditions or events beyond its control including, but not limited to:
- 13.1.1 Strike, lockout or other labour dispute affecting the employees of ECMS LTD or the Client where the latter case the effect is to prevent or hinder ECMS LTD's employees from performing their duties;
- 13.1.2 Acts of God.
- 13.1.3 Natural disasters.

- 13.1.4. Acts of war or terrorism.
- 13.1.5. Act or omission of government, highway authorities or telecommunications carrier, operator or administrator.
- 13.1.6. Delay in manufacture, production or supply by third parties of equipment or services required for the performance of the Services or supply of Goods.
- 13.1.7. Any event preventing ECMS LTD's employees from attending the Clients premises to perform the Services including but not limited to adverse weather conditions, road closure or congestion and mechanical breakdown.
- 13.1.8. Any hazard at the Client's premises including but not limited to impeded access or exit routes, structural defects, presence of noxious, combustible, radioactive or toxic substance which, in the reasonable opinion of ECMS LTD, comprises an unacceptable risk to the Health and Safety of its employees.
- 13.2 The Party in breach of default shall be entitled to reasonable extension of time to perform its obligations after notifying the other party.

#### **14. SEVERABILITY.**

- 14.1 If any provision or provisions of this Agreement shall be held invalid, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### **15. STAFF.**

- 15.1 All personnel supplied by ECMS LTD to the Client are employees or contractors of ECMS LTD.
- 15.2 ECMS LTD will provide employees to work under a contract who are age 18 years or over and will take all reasonable steps to ensure their honesty, trustworthiness and eligibility to work in the UK. We will take out character and employment references and check all appropriate documentation. We will provide the Client with a list of the names of all staff working at the Site, their duties and will notify the Client of any change to personnel.
- 15.3 The Client will agree not to employ, contact or otherwise engage any of ECMS LTD's employees during the term of this agreement. In the event of a breach of this clause 13.3 ECMS LTD shall be entitled to a fee of £850.00 + VAT for each individual so employed. ECMS LTD agrees not to directly employ, contract or otherwise engage any of the Client's employees during the term of this Agreement.
- 15.4 ECMS LTD will provide their employees with uniform clearly marked with the Company logo and an identification badge.