

## Terms and conditions for the supply of goods

### 1. INTERPRETATION

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

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with Condition 14.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with condition 2.3.

**Contract Price:** means the price for the Goods as set out in the Supplier's quotation.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Customer Information:** means the information received from the Customer against which the Supplier has issued a quotation and/or the Customer's complete and accurate information provided within the Order to determine the Supplier's contracted scope of work

**Force Majeure Event:** shall include, but shall not be limited to acts of God, epidemic or pandemic, strikes, lock outs, accidents, war, civil unrest, terrorism, threat of terrorism, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, government intervention, interruption or failure of a utility service, fire, breakdown or plant or machinery, a worldwide market shortage of a given component, or shortage or unavailability of raw materials from a natural source of supply.

**Goods:** the goods (or any part of them) set out in the Order.

**Intellectual Property:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation, as the case may be.

**Specification:** any specification for the Goods, including any related plans and drawings, and the Customer Information if applicable which is provided by the Supplier in the quotation.

**Supplier:** Lucy Electric Gridkey UK as set out in the Supplier's quotation.

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(b) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(c) a reference to **writing** or **written** includes emails.

### 2. BASIS OF CONTRACT

**2.1** These Conditions apply to the Contract to the exclusion of any other terms that the Customer 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 Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

**2.3** The Order shall be deemed to be accepted when the Supplier issues a formal order confirmation, at which point, subject to condition 2.4, the Contract shall come into existence.

**2.4** In the event that the Supplier's quotation specifies that the contract will become effective upon the completion of specific actions to be undertaken by the parties, the contract shall become binding on the date on which the specific requirements have been met in their entirety.

**2.5** The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

**2.6** The Supplier may rely upon the accuracy of the Customer's Information in preparing their quotation. Any resultant variation required to the Supplier's scope of work arising from insufficient or inaccurate Customer's Information shall be handled as a Contract amendment and the Contract Price shall be so uplifted

**2.7** Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

**2.8** A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue or as otherwise specified in the Supplier's quotation.

### 3. GOODS

**3.1** The Goods are described in the Supplier's Quotation.

**3.2** The Goods shall be manufactured according to Suppliers' standard processes and procedures including careful inspection, and where practicable, submitted to Supplier's standard tests at our works before despatch. Customer witnessed tests and/or customer specific tests shall be quoted separately within the Supplier's proposal. The Supplier shall invite the Customer to witness contracted tests giving a minimum 7 days written notice. In the event the Customer's representative fails to attend on the due date the Supplier shall perform said test or inspection and the Goods shall be deemed automatically accepted. If the performance figures obtained on any test proved are outside the limits specified, the Customer is entitled to reject the goods.

**3.3** To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier 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 Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This Condition 3.3 shall survive termination of the Contract.

**3.4** The Supplier reserves the right, acting reasonably to amend the Goods and any other provisions of these Conditions which it considers necessary, including without limitation where one of the following occurs:

a) an amendment, substitution, variation, extension or change in interpretation of applicable laws and regulations occur;

b) any modification is required which does not materially affect the nature or performance of the Goods; or

c) if any information provided by the Customer is incorrect or the Customer fails to give the Supplier relevant information in a timely manner.

The Supplier shall notify the Customer in writing of the changes that are to be made to the Goods in accordance with this Condition 3.4.

### 4. DELIVERY

**4.1** The Supplier shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note that shows all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable); and

(b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

**4.2** Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate instructions that are relevant to the supply of the Goods.

**4.3** The Customer shall collect the Goods from the Supplier's premises or at such other location as may be advised by the Supplier prior to delivery (**Delivery Location**) within three Business Days of the Supplier notifying the Customer that the Goods are ready.

**4.4** Delivery is Ex-Works Incoterms 2010 at the Delivery Location unless otherwise specified in the Supplier's quotation.

**4.5** The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's delay or failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

**4.6** If the Customer fails to take delivery in accordance with the terms of the Contract, within three Business Days of the Supplier notifying the Customer that the Goods are available for Delivery, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready, and Supplier will invoice for the Goods in accordance with condition 7.2; and

(b) the Supplier shall arrange for the storage of the Goods on behalf of the Customer whereupon all storage, insurance and associated demurrage and associated costs shall be invoiced on a week/month basis (as notified by the Supplier) until such times as the Customer notifies the Supplier of the collection details; and

(c) invoice the cost of freight when delivered if so instructed in writing by the Customer.

**4.7** In the event that there are multiple deliveries agreed in the Contract, the Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

### 5. QUALITY

**5.1** The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

(a) conform in all material respects with their description and any applicable Specification;

(b) be free from material defects in design, material and workmanship; and

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

**5.2** Subject to condition 5.3, if:

(a) the Customer gives notice in writing to the Supplier 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 condition 5.1;

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by the Supplier) shall return such Goods to the Supplier's place of business.

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

**5.3** The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in condition 5.1 in any of the following events:

(a) the Customer makes any further use of such Goods after giving notice in accordance with condition 5.2;

(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, integration, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of the Supplier; or

(e) the defect arises as a result of: fair wear and tear; inadequate products with which the Goods are integrated, inadequate utility services; wilful damage; negligence; abnormal storage; or working conditions;

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

**5.7** The Supplier will make good, by repair or supply of a replacement, defects which subject to the provisions of condition 5.3 above, appear in the Goods within a period of twelve (12) calendar months after the Goods have been delivered and arise solely from faulty design (other than a design made, furnished or specified by the Customer for which the Supplier has disclaimed responsibility in writing) materials or workmanship, provided always that defective parts have been returned to the Supplier if it shall have so required. The Supplier's liability under this Condition 5.7 shall be in lieu of any warranty and subject to Condition 5.5 and save as provided under this Condition 5.7, the Supplier shall not be under any liability whether in contract, tort or otherwise, in respect of defects in Goods delivered or for any injury (subject to Condition 9.1(a)), damage or loss resulting from such defects or from any work done in connection therewith.

### 6. TITLE AND RISK

**6.1** The risk in the Goods shall pass to the Customer on completion of Delivery.

**6.2** Title to the Goods shall not pass to the Customer until the earlier of:

(a) the Supplier receives payment in full (in cash or cleared funds) for the Goods; or

(b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in condition 6.4.

**6.3** Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Supplier immediately if it becomes subject to any of the events listed in condition 8.1; and

(e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

**6.4** Subject to condition 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

(a) it does so as principal and not as the Supplier's agent; and

(b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

**6.5** If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in condition 8.1, then, without limiting any other right or remedy the Supplier may have:

(a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

(b) the Supplier may at any time:

(i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

### 7. PRICE AND PAYMENT

**7.1** The price of the Goods shall be the Contract Price. Unless where otherwise provided all prices are in Great British Pounds Sterling.

**7.2** The Supplier may, by giving notice to the Customer at any time up to three (3) Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

(c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

**7.3** The price of the Goods:

(a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice;

(b) for export Contracts the Customer shall be responsible for all taxes, duties and dues and VAT, applicable outside the UK;

(c) excludes the costs and charges of packaging, insurance and transport of the Goods unless otherwise agreed.

**7.4** The Supplier may invoice the Customer for the Goods in accordance with the Supplier's quotation or on or at any time after the completion of delivery.

**7.5** The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice or as specified within the Supplier's quotation. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.

**7.6** If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, the Supplier may at its option require:

(a) the Customer to pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank plc's base rate from time to time. 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 Customer shall pay the interest together with the overdue amount.

(b) suspend any further activity against the Contract whilst the debt remains outstanding; and

(c) Reschedule any further performance, according to the other commitments that the Supplier has, but with a permitted slippage of at least the same period as the delay in effecting payment, without incurring any liability to the Customer, as a consequence of such delay.

**7.7** The Supplier may suspend the Contract in the event that the Customer's account has been placed on a "stop" by the Supplier's credit control department.

**7.8** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **8. TERMINATION**

**8.1** Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

(a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

(b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

**8.2** Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in Condition 8.1(a) to Condition 8.1 (d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

**8.3** Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

**8.4** On termination of the Contract for any reason the Customer shall immediately pay to the Supplier:

(a) all of the Supplier's outstanding unpaid invoices and interest;

(b) all costs associated with any work in progress or any actual or committed costs incurred by the Supplier up to the date of termination.

**8.5** On termination the Customer shall return all of the Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for the safe keeping of the goods and will not use them for any purpose not connected with this Contract.

**8.6** Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

**8.6** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## **9. LIMITATION OF LIABILITY**

**9.1** Nothing in these Conditions shall limit or exclude the Supplier's liability for:

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

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;

**9.2** Subject to Condition 9.1:

(a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(b) the Supplier's total liability in aggregate to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Contract Price.

## **10. FORCE MAJEURE**

Neither party shall be in breach of this contract nor liable for delay in performing, or failure to perform, any of its obligations under this contract if such delay or failure results from a Force Majeure Event or from any other events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 90 days, the party not affected may terminate this contract by giving 30 days' written notice to the affected party.

## **11. ASSIGNMENT AND OTHER DEALINGS.**

(a) The Supplier 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.

(b) The Customer 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 without the prior written consent of the Supplier.

## **12 CONFIDENTIALITY.**

(a) Each party undertakes that it shall not at any time during this Contract, and for a period of five years after termination of this Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by Condition 12(b). For the purposes of this Condition, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives or advisers who need to know such information for the

purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Condition 12; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract

## **13 ENTIRE AGREEMENT.**

(a) This Contract constitutes the entire Contract between the parties and supersedes and extinguishes all previous Contracts, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

(c) In the event of a conflict between the terms of the Contract and these Terms and Conditions, the terms of the Contract will prevail.

**14 VARIATION.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**15 WAIVER.** 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.

**16 SEVERANCE.** 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 Condition shall not affect the validity and enforceability of the rest of the Contract.

## **17 NOTICES.**

(a) 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 (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this condition and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 17(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am 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;

(c) The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

**18 THIRD PARTY RIGHTS.** No one other than a party to this Contract [and their permitted assignees] shall have any right to enforce any of its terms.

**19 GOVERNING LAW.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

**20 JURISDICTION.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.