

eCLAD LIMITED STANDARD TERMS AND CONDITIONS

These Conditions shall apply to all contracts for the supply of Goods and/or Services by eClad to the Customer to the exclusion of all other terms and conditions including any terms and conditions which the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

The Customer's attention is particularly drawn to the provisions of clause 11.

1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

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

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.8.

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

Customer: the person or firm who purchases the Goods and/or Services from eClad.

Deliverables: the deliverables (if any) set out in the Order.

Delivery Location: has the meaning set out in clause 4.1.

Force Majeure Event: has the meaning given to it in clause 14.1(a).

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

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed by the Customer and eClad.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, topography rights, trade secrets, 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 supply of Goods and/or Services, however constituted, as agreed verbally and/or evidenced in writing (together with any plans and drawings) and confirmed by the Customer's written or verbal acceptance of eClad's quotation and order confirmation.

eClad: eClad Limited, a company incorporated in Scotland (company number SC210882), having a trading address at eGroup, Tumulus Way, Midmill Industrial Estate, Kintore, Aberdeenshire AB51 0TG. and having its registered office at Johnstone House, 52-54 Rose Street, Aberdeen AB10 1HA.

Services: the services, including the Deliverables, supplied by eClad to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services as agreed in the Order and confirmed in writing by eClad to the Customer or as otherwise agreed between the parties.

eClad Materials: has the meaning set out in clause 8.1(g).

1.2 In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assignees;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory 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; and
- (d) 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;

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. All Goods, Services and Deliverables provided by eClad are subject to these Conditions unless otherwise agreed.
- 2.2 The Order shall only be deemed to be accepted at the earliest to occur of eClad issuing written acceptance of the Order or commencing work in performance of the Order, at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, assurance, warranty or representation made or given by or on behalf of eClad which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by eClad and any illustrations or descriptions of the Goods and/or Services by eClad are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 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.
- 2.6 Any quotation given by eClad shall only be valid for a period of 30 Business Days from its date of issue.

2.7 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

3.1 The Goods will be those structures and/or other goods described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify eClad 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 professional costs and expenses) suffered or incurred by eClad in connection with any claim made against eClad for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with eClad's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

4. DELIVERY OF GOODS

4.1 eClad shall deliver and if agreed install, the Goods at the location agreed with the Customer and set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Goods are ready.

4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence unless agreed with the Customer at the time the Order was placed. eClad shall not be liable for any delay in delivery of the Goods that is caused by the Customer, a Force Majeure Event or the Customer's failure to provide eClad with adequate delivery instructions and access.

4.4 If eClad fails to deliver the Goods, its liability shall, subject to clauses 11.2 and 11.3, be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

4.5 If the Customer fails to accept or take delivery of the Goods on the date advised by eClad that the Goods are ready, then except where such failure or delay is caused by eClad's failure to comply with its obligations under the Contract in respect of the Goods:(a) subject to clause 4.6, delivery of the Goods shall be deemed to have been completed on that day; and (b) eClad shall store the Goods until delivery takes place, or eClad exercises its rights in terms of clause 4.6, and charge the Customer for all related costs and expenses (including insurance).

4.6 If 10 Business Days after eClad notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, eClad has the right, at any time, to resell or otherwise dispose of part or all of the Goods and charge the Customer for (i) any difference between the price agreed with the Customer for the Goods and the price eClad received on resale; and (ii) all eClad and/or third party storage, transport, disposal and selling costs relating thereto.

5. QUALITY OF GOODS

5.1 Where the Customer demonstrates the Goods to be defective eClad shall not be liable for the defect if:

(a) the Customer makes or permits any further use of the Goods after giving notice of the defect to eClad;

- (b) the defect arises because the Customer failed to follow eClad's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the defect arises as a result of eClad following any drawing, design or Goods Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of eClad;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; and/or
 - (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.2 In clause 5.1 ((a) to (d)) reference to the Customer shall include reference to a third party act or omission permitted by the Customer.
- 5.3 The terms of these Conditions shall also apply to any repaired or replacement Goods supplied by eClad.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on delivery or seven days following notice being given to the Customer that the Goods are ready for collection.
- 6.2 Title to the Goods shall not pass to the Customer until eClad has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) any other goods that eClad has supplied to the Customer in respect of which payment has become due; and
 - (c) any Services provided by eClad.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as eClad's depository;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as eClad's property;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on eClad's behalf from the date of delivery;
 - (d) notify eClad immediately if it becomes subject to any of the events listed in clause 12; and
 - (e) give eClad such access and information relating to the Goods as eClad may require from time to time.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12, or eClad reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product or structure, and without limiting any other right or remedy eClad may have, eClad may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises or site of the Customer or of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

- 7.1 eClad shall subject to clause 7.3, provide the Services to the Customer in accordance with the Service Specification in all material respects.

- 7.2 eClad shall use reasonable endeavours to meet any performance dates for the Services specified, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services unless agreed in writing with eClad at the time of the Order.
- 7.3 eClad shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and eClad shall notify the Customer in any such event.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) any information it provides in the Goods and/or Services Specification are complete and accurate;
- (b) ensure that it, and its employees, agents, consultants and subcontractors co-operate with eClad in all matters relating to the Services;
- (d) provide eClad with such information and materials as eClad may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's Delivery Location for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) keep and maintain all materials, equipment, documents and other property used or owned by eClad (eClad Materials) at the Customer's Delivery Location in safe custody at its own risk, maintain eClad Materials in good condition until returned to eClad, and not dispose of or use eClad Materials other than in accordance with eClad's written instructions or authorisation;
- (h) accept responsibility for any damage to fixtures arising naturally out of the installation of the Goods at the Delivery Location unless caused by eClad's negligence and indemnifies eClad against the same; and
- (i) shall maintain appropriate All Risks Insurance, in terms acceptable to eClad, to cover any works carried out by eClad in connection with the Contract.

8.2 If eClad's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- (a) eClad may without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays eClad's performance of any of its obligations;
- (b) eClad shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from eClad's failure or delay to perform any of its obligations as set out in this clause 8; and
- (c) the Customer shall reimburse eClad on written demand for any costs or losses sustained or incurred by eClad arising directly or indirectly from the Customer Default.

8.3 In clause 8.2 references to the Customer's omission or failure shall be deemed to include any omission or failure of the Customer's employees, agents, customers, consultants and subcontractors.

8.4 With respect to the insurance to be maintained by the Customer in terms of clause 8.1(i) above, the Customer must ensure that eClad is either recognised as an insured party under that policy or the insurers waive any right of subrogation which they may have against eClad. This recognition or waiver is to continue until either the works have reached practical completion or the Contract is terminated (whichever is the earlier).

9. CHARGES AND PAYMENT

- 9.1 The price for Goods shall be the price set out in the Order. Unless specified in the Order, the price of the Goods is exclusive of all costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 9.2 The charges for Services shall be on a fixed fee basis and agreed with the Customer at the time of the Order save that eClad reserves the right to increase the amount charged for the Services where:
- (a) there is any material change to the Service Specification;
 - (b) there are any unforeseen circumstances of which eClad could not have been aware until visiting the Delivery Location or during the course of providing the Services; and
 - (c) there is delay in delivering the Services caused by the Customer or circumstances beyond the control of eClad.
- 9.3 In the event of (i) any delays to the work programme (other than if solely due to eClad); or (ii) any additional Services or Goods being requested the Customer and provided by eClad, the Customer shall compensate eClad for them at eClad's standard charges (day rates or otherwise) then applicable.
- 9.4 eClad reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to eClad that is due to:
- (a) any factor beyond the control of eClad (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 Goods Specification; or
 - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give eClad adequate or accurate information or instructions in respect of the Goods.
- 9.5 In respect of Goods and/or the Services, eClad shall invoice the Customer on completion of the Order or, if the performance of the Order takes more than one month, eClad may issue the Customer with inteeClad monthly invoices.
- 9.6 Payment shall fall due upon eClad issuing their invoice. The final date for payment in respect of that invoice shall be 30 days thereafter. Payment in terms of this contract shall only be deemed to have occurred when made in full and in cleared funds to a bank account nominated in writing by eClad. Time for payment shall be of the essence of the Contract.
- 9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by eClad to the Customer, the Customer shall, on receipt of a valid VAT invoice from eClad, pay to eClad such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods. Where projects are considered to be exempt or zero rated for value added tax, it is the customer's responsibility to provide written proof to eClad, PRIOR to contract start. Failing to provide written proof will result in VAT being charged and it is the customer's responsibility to "re-claim" this from the appropriate government office.
- 9.8 Without limiting any other right or remedy of eClad, if the Customer fails to make any payment due to eClad under the Contract by the due date for payment (Due Date), eClad shall have

the right to charge interest on the overdue amount at the rate of 8 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

- 9.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against eClad in order to justify withholding payment of any such amount in whole or in part. eClad may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by eClad to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by eClad.

11. LIMITATION OF LIABILITY: THE CUSTOMERS ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 11.1 eClad shall under no circumstances be liable to the Customer, whether in contract, delict (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.

- 11.2 eClad's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £50,000.

- 11.3 Without prejudice to the generality of clause 11.2 above, eClad shall have no liability to the Customer in respect of any claim relating to design (including, without limitation, the selection of materials) carried out by eClad (or on their behalf) where eClad (or those whom eClad are responsible) have carried out such design exercising reasonable skill and care. Moreover, eClad shall have no liability to the Customer where any error, inaccuracy or inadequacy in design carried out by eClad (or on eClad's behalf) where such error, inaccuracy or inadequacy is as a consequence of an error, inaccuracy or inadequacy in any information supplied to eClad by the Customer or any third party in connection with the Contract (whether as part of the Order or otherwise).

- 11.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

- 11.5 This clause 11 shall survive termination of the Contract.

12. TERMINATION

- 12.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within three days of that party being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within

the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 12;
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the other party's financial position deteriorates to such an extent that in eClad's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

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

12.3 Without limiting its other rights or remedies, eClad may suspend provision of the Services under the Contract and any other contract between the Customer and eClad if the Customer becomes subject to any of the events listed in clause 12.1 or eClad 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.

13. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to eClad all of eClad's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has yet been submitted, eClad shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of eClad Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then eClad may enter the Customer's

premises and/or the Delivery Location and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. GENERAL

14.1 Force majeure:

- (a) For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of eClad including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of eClad or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) eClad shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents eClad from providing any of the Services and/or Goods for more than 4 weeks, eClad shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14.2 Assignment and subcontracting:

- (a) eClad may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of eClad, assign, transfer, mortgage charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

14.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number or by email.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or 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, on the next Business Day after transmission.
- (c) This clause 14.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

14.4 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.5 Waiver: A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising 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 its 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.

14.6 No partnership: Nothing in the Contract is intended to, nor shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

14.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by eClad.

14.9 Governing law and jurisdiction: This 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, Scots law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.

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1 September 2018**