

## E2 Services Limited Terms and Conditions of Sale

### 1. Definitions

- 1.1 In these conditions the following terms shall have the following meanings:
- ) 'buyer' means the person who buys or agrees to buy products and services from the seller.
  - ) 'seller' means E2 Services Limited, a company registered in England, registered number 5401878, registered address: Hill Street, Lydney, Gloucestershire, GL15 5HB.
  - ) 'conditions' means the terms and conditions of sale set out in this document and includes any special terms and conditions agreed in writing between the buyer and the seller.
  - ) 'contract' means the agreement in writing for the supply of the goods or services from E2 Services Limited to the buyer and unless otherwise stated shall include purchase orders, maintenance contracts, project contracts, shared savings agreements, rental agreements and client agreements.
  - ) 'order' means any purchase order for the product(s) or services issued by the buyer to the seller and accepted by the seller.
  - ) 'services' means the energy management services that the seller agrees to provide to the buyer pursuant to any agreement or contract.
  - ) 'products' means the product(s) with any agreed modifications, which the buyer agrees to buy from the seller pursuant to any agreement or contract.
  - ) 'site' means the building or area where the services are carried out or where the goods are delivered to.
  - ) 'schedule of rates' means E2 Services Limited's list of prices, expenses, prelims, hourly labour charges and hourly rates for mileage time.
  - ) 'minimum term' means the minimum period, which the buyer and the seller agree that the services will be provided pursuant to the agreement or contract.
  - ) 'service specification' or 'specification of works' means the specification describing the services to be provided to the buyer in the contract or agreement.
  - ) 'writing' includes letters, email, facsimile transmission and comparable means of communication.
- 1.2 Any reference in these conditions to any provision of a statute shall be constructed as reference to that 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.

### 2. Basis of the Sale

- 2.1 These conditions shall apply to all contracts and agreements between the seller and the buyer to the exclusion of other terms and conditions including any terms and conditions which the buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for products and services shall be deemed to be an offer by the buyer to purchase the products and services subject to these conditions.
- 2.3 Acceptance of delivery of the products shall be deemed conclusive evidence of the buyer's acceptance of these conditions.
- 2.4 The contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 2.5 No variation to these conditions shall be binding unless agreed in writing by the buyer and the seller.
- 2.6 Any person who is not a party to the contract shall not have any rights under or in connection with it.
- 2.7 Any advice or recommendation given by the seller or its employees or agents as to the storage, application or use of the products which is not confirmed in writing by the seller is followed or acted upon entirely at the buyer's own risk, and accordingly the seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.8 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the seller shall be subject to correction without any liability on the part of the seller.
- 2.9 All samples, drawings, scope of works, specifications and advertising issued by E2 Services Limited (or a third party supplier with whom E2 Services Limited deals with) and any descriptions or illustrations contained within E2 Services Limited's (or a third



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party supplier with whom E2 Services Limited deals with) marketing literature are issued or published for the sole purpose of giving an approximate guidance of the goods and services described within them. They shall not form part of the contract.

### 3. Termination & Cancellation

- 3.1 The buyer may not cancel a contract for the acquisition of the products or the provisions of the services before the end of the minimum term specified.
- 3.2 The term of any contract for the provision of the services shall continue until either the seller or the buyer gives to the other at least 1 month's notice in writing to terminate the contract to expire at any time after the end of the minimum term.
- 3.3 Without prejudice to any other rights or remedies which the parties may have, either party may terminate a maintenance contract or a project contract without liability to the other immediately on giving notice to the other if:
- ) the buyer fails to pay any amount due under the contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment
  - ) subject to clause 3.4, the other party commits a material breach of any of the terms of the contract and (if such a breach is remediable) fails to remedy that breach within 60 days of that party being notified in writing of the breach
- 3.4 A delay in delivery of any products or supply of the services shall only constitute a material breach of the contract if such delay exceeds a period of 180 days and no other suitable remedy of that breach is available.
- 3.5 Subject to clause 3.3 and 3.4, the following terms shall apply to the cancellation of a maintenance contract:
- ) E2 Services Limited will require a cancellation notice period of 60 days prior to the end of the agreed contract period. If the required notice is not given prior to end the agreed contract period the maintenance contract will automatically renew for a further 12 months
  - ) E2 Services Limited will charge for the total contract cost if a maintenance contract is prematurely cancelled. E2 Services Limited will, however, honour all remaining site visits unless expressly requested to do otherwise
- 3.6 The termination of the contract by the expiry of notice shall not prejudice the rights of the seller in respect of any matter required to be performed or observed by the buyer either during the contract or following its termination.
- 3.7 Subject to clause 3.3 and 3.4, the following terms shall apply to the cancellation of a project contract:
- ) E2 Services Limited will require 3 months written notice, the date of expiry of such notice being the date of cancellation
  - ) the buyer shall pay 100% of the cost of all products and services provided from the date the project contract commenced up to and including the date of cancellation
- 3.8 Notice to cancel a project or maintenance callout to site shall be 4 hours prior to the agreed site attendance time. Where such notice period is not given, we reserve the right to charge a minimum of 4 hours labour plus hourly rate charges for the total time spent travelling plus expenses incurred will be charged to the buyer in accordance with E2 Services Limited's schedule of rates. The same will apply if the services are not required once an engineer is dispatched to site or once on site.
- 3.9 No refund will be given for any products that are returned due to no fault of E2 Services Limited, however if the products returned are un-used and still in their original packaging E2 Services Limited may, in its absolute discretion, offer a replacement of more suitable products or issue a credit note. Where products are returned and where E2 Services Limited, in its absolute discretion, agrees to provide the buyer with a refund E2 Services Limited reserves the right to charge a re-stocking charge of 25% of the total cost of such products. Such a charge may be made where the company incurs the same charge from its suppliers and is due to the specialist nature of the products.
- 3.10 Upon termination of contract regardless of reason the buyer shall:
- ) immediately pay E2 Services Limited all of its outstanding unpaid invoices (including any interest applicable) and, in respect of services supplied but for which no invoice has been submitted, that E2 Services Limited may submit an invoice, which shall be payable immediately upon receipt
  - ) within 7 days of being requested to do so, return any products belonging to E2 Services Limited that have been left at the site. If the buyer fails to do so, then E2 Services Limited may enter the buyer's premises and take possession of them. Until they have been returned or repossessed, the buyer shall be solely responsible for their safe keeping

### 4. Price of Products/Services

- 4.1 Where a quotation has been provided to the buyer prior to entering into the contract such quotation shall be valid for a period of 60 days from the date of quotation provided that it has not been withdrawn by E2 Services Limited within that period and E2 Services Limited has received written acceptance of the quotation within that period.
- 4.2 Where the buyer requires delay of fulfilment of the contract beyond the time initially agreed in the contract E2 Services Limited reserves the right to raise a further quotation based on prices applicable at the time of fulfilment.
- 4.3 The price of the products shall be the price stated in any order by the buyer that has been accepted by the seller.
- 4.4 All prices quoted are net and are subject, where appropriate, to the addition of value added tax at the current rate applicable as of the date of invoice for the goods/services being supplied.

- 4.5 Maintenance contracts shall be on a fixed price basis at the amount and for the level of service set out and agreed in the contract. The fixed price is payable by equal monthly instalments for which E2 Services Limited shall invoice the buyer monthly in advance unless otherwise agreed. Unless otherwise agreed, the maintenance contract shall not include the use of E2 Services Limited's 24 hour call out facility or any other goods or services required over and above the agreed level of service contained with the maintenance contract. Any costs incurred in addition to the service level agreed within the maintenance contract will be invoiced in accordance with E2 Services Limited's schedule of rates.
- 4.6 E2 Services Limited reserves the right to review and increase its schedule of rates. The schedule of rates applicable to each contract shall be the schedule of rates in place at the date of each contract and the buyer is under an obligation to ensure that before entering into each contract it has the details of the schedule of rates in force at that time.

## 5. Terms of Payment

- 5.1 Subject to any special terms agreed in writing between the buyer and the seller, the seller shall be entitled to invoice the buyer for the price of the products on or at any time after delivery of the products, unless the buyer wrongfully fails to take delivery of the products, in which event the seller shall be entitled to invoice the buyer for the price at any time after the seller has tendered delivery of the products.
- 5.2 The buyer shall pay the product price together with any VAT thereon on/within 30 days of the date of the invoice by cheque or automated electronic transfer notwithstanding that delivery may not have taken place and the property in the products has not passed to the buyer. The time for payment of the price shall be of the essence of the contract. Receipts for payment will be issued on request.
- 5.3 No payment shall be deemed to have been received until E2 Services Limited is in receipt of cleared funds.
- 5.4 The buyer shall pay the service fees together with any VAT thereon monthly during the term of the contract by way of cheque or automated electronic transfer on the dates agreed in the contract provided that:
- ) the buyer shall pay the service fees associated with any hosting services either annually or monthly in advance (as stated in the contract)
  - ) the buyer shall pay the service fees associated with the communication services (once the buyer has been provided with all the communication services as stated in the service specification) monthly in arrears
- 5.5 If the buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the seller, the seller shall be entitled to:
- ) Suspend or cancel any contract for the services
  - ) Claim interest on the amount outstanding and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998

## 6. Delivery

- 6.1 Delivery of the products shall be made by the seller to the place or places specified in the contract or as subsequently agreed. The seller and the buyer shall agree the date and time for delivery of the products ("the delivery date"). Any dates for delivery quoted by the seller prior to the date of the contract or appearing in the order from the buyer shall not be binding on the buyer unless otherwise agreed in writing.
- 6.2 Time for the delivery shall not be of the essence unless previously agreed by the seller in writing. If no dates or times are specified then delivery shall take place within a reasonable time.
- 6.3 If for any reason the buyer fails to accept delivery of any of the goods when they are ready for delivery, or E2 Services Limited is unable to deliver the goods on time because the buyer has not provided appropriate instructions, documents, licenses or authorisations, or E2 Services Limited is not given access to the site to deliver the goods:
- ) Risk in the goods shall pass to the buyer
  - ) The goods shall be deemed to have been delivered
  - ) E2 Services Limited may store the goods until delivery, whereupon the buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) in addition to the price stated in the contract
- 6.4 Where the seller has agreed to deliver the products by separate instalments in accordance with an agreed delivery schedule, each separate instalment shall be invoiced and paid for in accordance with the provisions in these conditions.
- 6.5 The failure of the buyer to pay for any one or more of the individual deliveries of the products on the due dates shall entitle the seller:
- ) without notice to suspend further deliveries of the products pending payment by the buyer and/or
  - ) to treat the contract and any other contract existing at the time as repudiated by the buyer
- 6.6 E2 Services Limited may use sub-contract labour for specialist skills or to complete a project.
- 6.7 If the seller fails to deliver the products for any reason other than any cause beyond the seller's reasonable control or the buyer's fault and the seller is accordingly liable to the buyer, the seller's liability shall be limited to the excess (if any) of the cost to the buyer (in the cheapest available market) of similar products to replace those not delivered over the price of the products.

## 7. Installation

- 7.1 Where the buyer has requested installation of the products, the buyer acknowledges that the seller may appoint subcontractors for such installation and must provide the seller with the following information:
- ) the site address where the products are to be installed (the “site”), normal operating hours for the site when the products can be installed, layout plans of the site, details of the use of the building and key contacts at the site to enable installation, historic energy consumption, existing plant maintenance agreements and other relevant information requested by the seller or which would be reasonable for the buyer to provide
  - ) the details of appropriate personnel to liaise with any subcontractor to enable the installation of the products and appropriate personnel to accompany any subcontractor representative who may be required and who would be authorised and able to liaise with the seller or any subcontractor and provide any decision relating to the installation and the site which may be required
- 7.2 In addition to Clause 7.1, the buyer confirms that where requested and where reasonably possible it shall ensure the following:
- ) a power-down of the site
  - ) access to the site pre installation, during installation and post installation where required by the seller or any subcontractors
  - ) where any report on the site has been provided by the seller or its subcontractors, the buyer must act on any recommendations stated therein or any other documentation which may be required before the installation
- 7.3 The buyer acknowledges that the following may affect, terminate or mean that installation is not possible:
- ) E2 Services Limited or any subcontractor will not be permitted to amend or alter any existing equipment, plant or machinery on site unless this has been agreed in writing in advance
  - ) the seller or any subcontractor will not undertake the installation where any prior report has recommended certain works to be carried out by the buyer and those works have not been undertaken by the buyer and/or in the interests of health and safety it would not be advisable to do so
  - ) the installation may reveal pre-existing issues/faults with the buyer’s equipment, plant or machinery and whilst the seller or any subcontractor will identify those it comes across to the seller and/or the end client, the rectification of these issues/faults will not be undertaken by the seller or any subcontractors as part of their services and it may be possible that the installation works will need to be postponed until such issues/faults are rectified
  - ) the seller or any subcontractor will not be required to revisit a site without charge unless the same is due to incorrect or negligent installation or commissioning, and such fault has arisen within the agreed defects liability period
- 7.4 In addition to Clause 10, the buyer acknowledges that the seller or any subcontractor shall not be liable for the following:
- ) any existing circuit labelling cannot be guaranteed to be correct and at the point of power down a test shall be undertaken to check or confirm labelling and as result if there is any error, failure or fault due to incorrect labelling the seller shall not be held responsible
  - ) any third party equipment failing after the installation, except due to the seller or the subcontractors negligence
  - ) any loss of power following or during installation and the buyer should take such steps to mitigate
- 7.5 The buyer acknowledges that the seller shall have no liability in relation to installation if the buyer fails to provide any information or breaches any of this Clause 7.
- 7.6 The buyer shall be liable for abortive fees as stated in the purchase order if the seller or any subcontractors are unable to install due to a breach of this clause 7 or if the seller or the subcontractor’s safety is put at risk on site.
- 7.7 E2 Services Limited will not be responsible for the cost of additional labour when working on site in areas classified as “No lone Working” areas. The supply of such additional labour to assist in these circumstances will be charged in addition to the price stated in the contract and shall be in line with E2 Services Limited’s schedule of rates applicable for the contract.
- 7.8 The buyer will supply on-site access and lifting equipment for E2 Services Limited unless specifically agreed otherwise.

## 8. Acceptance

- 8.1 The buyer shall be deemed to have accepted the products 24 hours after delivery to the buyer.
- 8.2 After acceptance the buyer shall not be entitled to reject the products.
- 8.3 Notwithstanding 6.1 above, any delivery acknowledgement document signed by or on behalf of the buyer shall be conclusive proof of the quantity of the products delivered and that the products are free from any defects that would be apparent from a reasonable inspection of the products by the buyer (notwithstanding that no such inspection shall have occurred).
- 8.4 Where the buyer properly rejects the products, which are not in accordance with the contract then the contract for the provision of the services, shall be cancelled.

## 9. Buyer's Risk/ Title

- 9.1 Risk of damage to or loss of the products shall pass to the buyer at the time of delivery or, if the buyer wrongfully fails to take delivery of the products, the time when the seller has tendered delivery of the products.
- 9.2 In spite of delivery having been made property in the products shall not pass from the seller until:
- ) the buyer shall have paid the price plus VAT in full
  - ) no other sums whatever shall be due from the buyer to the seller
- 9.3 The seller shall be entitled to recover the price (plus VAT) notwithstanding that property in any of the products has not passed from the seller.
- 9.4 Until such time as property in the products passes from the seller the buyer shall upon request deliver up such of the products as have not ceased to be in existence or resold to the seller. If the buyer fails to do so the seller may enter upon any premises owned occupied or controlled by the buyer where the products are situated and repossess the products. On the making of such request the rights of the buyer under clause 8.3 shall cease.
- 9.5 The buyer shall not pledge or in any way charge by way of security for any indebtedness any of the products, which are the property of the seller. Without prejudice to the other rights of the seller, if the buyer does so all sums whatever owing by the buyer to the seller shall forthwith become due and payable.
- 9.6 The buyer shall insure and keep insured the products to the full price against 'all risks' to the reasonable satisfaction of the seller until the date that property in the products passes from the seller, and shall whenever requested by the seller produce a copy of the policy of insurance. Without prejudice to the other rights of the seller, if the buyer fails to do so all sums whatever owing by the buyer to the seller shall forthwith become due and payable.
- 9.7 Goods that are lost, stolen or damaged during the fulfilment of any contract by E2 Services Limited and through no negligence of E2 Services Limited or its Employees shall be the responsibility of the buyer and any replacement of lost, stolen or damaged goods from or at the site in these circumstances will be charged in accordance with the schedule of rates.

## 10. Warranties & Liability

- 10.1 The seller warrants that the products will correspond with their description.
- 10.2 Unless otherwise extended by E2 Services Limited in writing, E2 Services Limited will replace or repair free of charge all goods which are or become faulty through defects or workmanship within a period of 12 calendar months from the date of delivery, provided that the buyer has notified E2 Services Limited of the fault in writing within that period and that the goods have not been repaired, maintained, accessed or tampered with or provided by the buyer or any third party subject to the following provision of this clause 8.
- 10.3 The seller shall be under no liability in respect of any defect arising from wilful damage to, negligence of the buyer, failure to follow the seller's instructions (whether oral or in writing) or misuse of the products or the services.
- 10.4 The seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the products or the services has not been paid by the due date for payment.
- 10.5 Warranty of goods will be void if they have been maintained, repaired, tampered with or accessed by the buyer or any other third party.
- 10.6 The products and services are not designed or suitable for the sole control, monitoring or other purpose associated with any human safety equipment including (without limitation) medical equipment.
- 10.7 Faulty products within their warranty period must be returned to E2 Services Limited and not to the manufacturer or distributor.
- 10.8 Where any valid claim in respect of any of the products or the services which is based on any defect in the quality or condition of the products or failure to properly provide the services is notified to the seller in accordance with these conditions, the seller shall be entitled to replace the products (or the part in question) free of charge or, at the seller's sole discretion, refund to the buyer the price of the products (or a proportionate part of the price), but the seller shall have no further liability to the buyer.
- 10.9 Except in respect of death or personal injury caused by the seller's negligence, the seller shall not be liable to the buyer by reason of any representation, or any implied warranty condition or other term, or any duty at common law, or under the express terms of the contract for any consequential loss or damage (whether for loss of profit or otherwise), costs, or other claims for consequential compensation whatsoever (and whether caused by the negligence of the seller, its employees or agents, or otherwise) which arise out of or in connection with the supply of the products or their use by the buyer or the provision of the services.
- 10.10 The seller shall not be liable to the buyer caused by:
- ) the misuse of the products
  - ) any failure by the buyer (or any other person responsible) to earth the products or to disconnect the power supply prior to the removal of the casing to the products
  - ) The fault of the buyer or any third party in the installation of products

- 10.11 If E2 Services Limited's performance of its obligations under the contract is prevented or delayed by any act or omission of the buyer, its agents, subcontractors, consultants or employees, E2 Services Limited shall not be liable for any costs, charges or losses sustained or incurred by the buyer arising directly or indirectly from such prevention or delay
- 10.12 Nothing in these conditions limits or excludes E2 Services Limited's liability:
- ) For death or personal injury resulting from its negligence
  - ) For any matter which it would be illegal for E2 Services Limited to exclude or attempt to exclude its liability
  - ) For any damage or liability incurred by the buyer as a result of fraud or fraudulent misrepresentation by E2 Services Limited
- 10.13 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the contract.
- 10.14 Subject to conditions.10.12 and 10.13:
- ) E2 Services Limited's total 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 the contract shall be limited to the price stated in the contract
  - ) E2 Services Limited shall not be liable to the buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the contract. Any claim whatsoever from E2 Services Limited will be limited to the level of liability insurance for that particular type of cover only. The limit of E2 Services Limited's Professional Indemnity Insurance cover and any other cover we offer, that may be required in the event of a claim against E2 Services Limited is strictly in-line with our insurers policy only, we will not be able to offer any additional financial cover over the sum of which we are currently insured. Please refer to E2 Services Limited's insurance documents for full details of cover. In a situation where our current Insurance levels are deemed insufficient for your requirements or special arrangements are necessary, we reserve the right to pass on any additional cost
- 10.15 The buyer shall be liable to pay to E2 Services Limited, on demand, all reasonable costs, charges or losses sustained or incurred by E2 Services Limited (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the contract or conditions, subject to the seller confirming such costs, charges and losses to the buyer in writing.

## 11. Rental Equipment

- 11.1 E2 Services Limited shall at all times own all rental equipment supplied to you. You will not let, sell, charge, assign, sub-license or allow a third party to use the rental equipment or remove any labels, and shall not prejudice our rights in the rental equipment in any way. We may replace the rental equipment from time to time either with your prior consent or provided that the replacement rental equipment is of a specification that is at least equal to the rental equipment originally supplied and such change does not materially disrupt the provision of the services.
- 11.2 Subject to the other terms of this clause 11, E2 Services Limited (or our authorised representative) shall, during our usual working hours:
- ) where necessary install the rental equipment at your premises at a time and date agreed with you
  - ) use our reasonable endeavours to repair any faults to the rental equipment in accordance with our standard procedures
- 11.3 It is your responsibility to look after the rental equipment that is in your possession or custody and you agree to pay for the rental equipment to be replaced or repaired if it is lost, stolen or damaged.
- 11.4 You will notify us promptly of any faults which occur, any repairs which become necessary, and of any loss, theft or damage to the rental equipment.
- 11.5 You agree that you will only use the rental equipment in conjunction with the relevant services and shall comply with our reasonable instructions in relation to its use.
- 11.6 You shall be responsible for maintaining adequate cover in place to insure the rental equipment while it remains in your possession and custody. You will also be responsible for obtaining and, where appropriate, paying for all necessary licenses, consents and approvals required for the installation and use of the rental equipment.
- 11.7 You will not (and you will ensure that no-one else will) repair, alter, modify or maintain, or make any additions or attachments to, or otherwise alter, the rental equipment without our prior written consent. We will not be liable for any costs or charges incurred, faults caused by, or repairs required as a result of, installation or programming of rental equipment that is carried out by any other person (other than our employees or agents). You agree to indemnify us for all losses, damages and expenses that are brought against or incurred by us, arising as a result of the same.
- 11.8 On expiry or termination of the agreement or the relevant service, all rental equipment must be returned to us in reasonable condition, subject to reasonable wear and tear. If you fail to return or make available for collection the rental equipment in a

reasonable condition or at all we may, at our option, invoice you for a sum equal to the original cost of the rental equipment less any depreciation together with any costs reasonably incurred by us.

- 11.9 In the event that you return rental equipment to us and it is not received by us, in the absence of reasonable evidence that the rental equipment has been delivered to us you accept that you shall remain liable for the rental equipment.

## 12. Services

- 12.1 The seller shall provide the services in accordance with the service specification, though the seller shall not have any liability to the buyer for any interruption in or failure of the services due to circumstances beyond the control of the seller including but not limited to the following:

- ) Any delays or failure of the services attributable to third parties
- ) Any failures of third party hardware or software
- ) Any incorrect reading not caused by the products
- ) Any misuse of the products by the buyer or any third party
- ) The failure of the buyer or any third party the set up of the services or the installation of products; except for any subcontractor appointed by the seller
- ) Any losses of data or services through power failure to the products
- ) Any EMF interference or RAM corruption
- ) Any failure by the buyer to observe these terms and conditions

- 12.2 The seller does not monitor and will have no liability for the contents of any communications or data transmitted by virtue of the services and the buyer shall indemnify the seller and keep the seller indemnified against any liability associated with the processing or collection of such communications or data.
- 12.3 The buyer grants to the seller a non-exclusive, royalty free licence to use store and maintain any data supplied as part of the services on a server for the purposes of providing the services in accordance with these conditions. On termination the seller shall destroy all copies of such data.
- 12.4 The seller shall use its reasonable endeavours to use a secure server in the provision of the services and to prevent any person from gaining access to the data collected pursuant to the services whilst it is on the server. The seller shall not be responsible for default on behalf of the buyer to keep access details and passwords secret or any other default by the buyer.
- 12.5 The seller shall use its reasonable endeavours to use the latest version of any software associated with the services and will advise the buyer of any such changes or any changes to the service specification by giving the buyer at least one month's notice of any change.
- 12.6 It is the buyer's responsibility to ensure that it has the correct software and hardware to use the services and have access to the server.
- 12.7 Where the seller has contracted with the buyer to supply to the buyer hosting services then the minimum term of the contract shall be 12 months and thereafter shall be terminable (subject to the other provisions in these terms and conditions) on either party giving the other at least 1 month's notice in writing.
- 12.8 The seller shall use its reasonable endeavours when providing the hosting services to keep any server downtime to a minimum. The seller will use its reasonable endeavours to inform the buyer of any planned downtime.

## 13. Bankruptcy & Insolvency

- 13.1 In the case of the buyer being declared bankrupt or insolvent, E2 Services Limited shall be at liberty to immediately remove any engineer from a site or to access a site in accordance with clause 9.4 to remove any products not paid for in full under any contract or agreement.

## 14. Force Majeure

- 14.1 E2 Services Limited will not accept any liability for any failure or delay in performance of the contract where performance is wholly or partially delayed, hindered or prevented by any circumstances, beyond the reasonable control of E2 Services including, but not limited to, acts of God, acts of terrorism, war or national emergency, governmental actions, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials/products.

## 15. Trademarks

- 15.1 No right or license is granted under this contract of sale to the buyer under any patent, trademark, copyright, registered design or other intellectual property right except the right to use of the products.

## 16. Determination

- 16.1 If the buyer shall make default in or commit breach of any contract with the seller or of any other of his obligations to the seller, or if any distress or execution shall be levied upon the buyer's property or assets, or if the buyer shall make any arrangement or composition with creditors or commit any act of bankruptcy, or if a petition or receiving order in bankruptcy shall be presented or made against him or if the buyer is a limited company and any resolution or petition to wind up (other than for purposes of amalgamation or present reconstruction) shall be passed, or if a receiver of the buyer's undertaking property or assets or any part thereof shall be appointed, the seller shall have the right forthwith to determine any contract then subsisting and upon written notice of such determination without prejudice to any claim or right the seller may otherwise make to exercise and without compensation to the buyer.

## 17. General

- 17.1 No waiver by the seller of any breach of a contract by the buyer shall be considered as a waiver of any subsequent breach of the contract or any subsequent contract.
- 17.2 In order to ensure the continuing quality of the seller's products, the buyer will permit a representative of the seller to inspect and sample any products remaining in the buyer's possession and control.
- 17.3 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.
- 17.4 The parties agree and declare that none of the provisions of these conditions are intended to be enforceable pursuant to the contract (Rights of Third Parties) Act 1999 by any person who is not a party thereto.
- 17.5 Any notice under or in connection with a contract shall be in writing and shall be served by first class post or by hand on the party or sent by recorded delivery or email at or to the address of the party set out in the contract or at or to such other address as may be subsequently notified by one party to the other. In the absence of evidence of earlier receipt any notice shall be deemed to be duly served; if delivered personally when left at the address; if sent by recorded delivery 3 days after posting; if sent by e-mail, when received.
- 17.6 The contract shall be governed by the laws of England and Wales.