

TERMS & CONDITIONS OF SALE

The customer's attention is drawn in particular to the provisions of clause 14.

1. Interpretation

1.1 Definitions

Approvals: any approvals required in respect of the manufacture of the Goods, including those approvals required for regulatory compliance.

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

Buyer: the person or firm who purchases the Goods from Elta Fans.

Buyer's Premises: any buildings, offices, accommodations and other facilities of the Buyer or any third party at which the Goods are, or are to be, stored and/or installed, and/or at which the Services are, or are to be, provided.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 17.4.

Confidential Information: any information (however recorded or preserved) of a confidential nature concerning the business, affairs, customers, clients or suppliers of a party or of any member of its Group, including but not limited to information relating to the party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

Contract: the contract between Elta Fans and the Buyer for the sale and purchase of the Goods and/or Services in accordance with these Conditions.

Design & Application Advice: any advice on system design or application provided by Elta Fans to the Buyer in relation to the Goods or Services which may include deviations from any Goods Specification or Scope of Works or any other specifications provided by the Buyer.

Elta Fans: Elta Fans Limited (registered in England and Wales with company number 00820750).

Force Majeure Event: an event which materially interferes with the ability of a party to perform its obligations or duties which is not within the reasonable control of the party affected and which could not with the exercise of due diligence have been avoided, including, but not limited to, acts of God, acts of public enemies, insurrections, wars or warlike action (whether actual, pending or expected), terrorism, sabotage, threats of terrorism or sabotage, vandalism, accidents, fires, floods, interruption of utility services or acts of government or governmental agency.

Free Issue Materials: materials including data, tools, patterns, input material and other equipment issued by the Buyer to Elta Fans solely for use in relation to the Contract.

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

Goods Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and Elta Fans.

Group: in relation to a party, means its subsidiaries from time to time, its holding company from time to time and any subsidiaries of such holding company from time to time. A company is a "subsidiary" of another company (its "holding company") if that other company, directly or indirectly, through one of its subsidiaries controls it. For purposes of this definition, "**Control**" (and, with correlative meanings, the terms "controlled by" and "under common control with") means (a) the possession, directly or indirectly, of the power to direct the management or policies, whether through the ownership of voting securities or by contract relating to voting rights or corporate governance, or (b) the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities or other ownership interest.

Order: the Buyer's order for the Goods and/or Services, as set out in the Buyer's purchase order form or the Buyer's written acceptance of Elta Fans' quotation.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Buyer is the Data Controller and in relation to which Elta Fans is providing services under the Contract.

Services: the services supplied by Elta Fans to the Buyer as set out in the Scope of Works.

Scope of Works: the description or specification for the Services provided in writing by Elta Fans to the Buyer.

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1.2 Interpretation:

- 1.2.1 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.
- 1.2.2 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.
- 1.2.3 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 Buyer 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 Buyer to purchase Goods and/or Services in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Goods Specification and/or Scope of Works are complete and accurate and for giving Elta Fans any necessary information relating to the Goods and/or Services within a sufficient time to enable Elta Fans to perform the Contract in accordance with its terms.
- 2.3 The Order shall only be deemed to be accepted when Elta Fans issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by Elta Fans and any descriptions or illustrations contained in Elta Fans' catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods and/or Services given by Elta Fans shall not constitute an offer. A quotation shall only be valid for the period specified in Elta Fans' quotation.

3. Cancellation of Orders and Return of Goods

- 3.1 No Order which has been accepted by Elta Fans may be cancelled by the Buyer except with the agreement in writing of Elta Fans and on the condition that the Buyer shall indemnify Elta Fans in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Elta Fans up to and until the date of the cancellation in connection with the Order or as a result of cancellation.
- 3.2 The Buyer may, with the agreement in writing of Elta Fans, return any unused Goods, which are "stock" items (i.e. Goods that are within the Elta Select range of branded products sold by Elta Fans at the time of return) to Elta Fans, provided that any such Goods are returned to Elta Fans' premises at the Buyer's expense:
- 3.2.1 in an unused and re-saleable condition; and
- 3.2.2 within [one (1)] calendar month of the date of delivery; and
- 3.2.3 with appropriate Elta Fans return paperwork completed as required by Elta Fans.
- 3.3 Where the Goods are returned and accepted by Elta Fans to be in an unused and re-saleable condition, Elta Fans will raise a credit in favour of the Buyer. The amount of credit will be calculated on the basis of the price paid by the Buyer for the Goods, less a 25% restocking fee.
- 3.4 The right set out in clause 3.2 shall not apply in the case of any Goods which are not part of the Elta Select range of branded products sold by Elta Fans at the time of return.

4. Goods

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- 4.1 The Goods shall be as described in the Goods Specification.
- 4.2 To the extent that the Goods are to be manufactured in accordance with any specification supplied by the Buyer, the Buyer shall indemnify Elta Fans 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 Elta Fans in connection with any claim made against Elta Fans for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Elta Fans' use of or compliance with such specification. This clause 4.2 shall survive termination of the Contract.
- 4.3 Elta Fans reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.
- 4.4 Any Goods to be sold within the EU are required to bear a CE mark. If the Buyer requests Elta Fans to omit a CE mark from the Goods as they are not being sold within the EU, the Buyer shall be responsible for ensuring that the Goods bear the CE mark should they later be sold in the EU. The Buyer shall indemnify Elta Fans against any claim made against Elta Fans as a consequence of the Buyer's failure to comply with any EU legislation in relation to CE marking.
- 5. Delivery of Goods**
- 5.1 Elta Fans shall ensure that:
- 5.1.1 each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the contract number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 5.1.2 if Elta Fans requires the Buyer to return any packaging materials to Elta Fans, that fact is clearly stated on the delivery note. The Buyer shall make any such packaging materials available for collection at such times as Elta Fans shall reasonably request. Returns of packaging materials shall be at Elta Fans' expense.
- 5.2 Delivery of international Orders shall be in accordance with the Incoterm specified by Elta Fans when Elta Fans accepts the Order in accordance with condition 2.3 or if no Incoterm is specified will be in accordance with FCA, Incoterms 2010 at Elta Fans Fareham or Kingswinford facilities as appropriate.
- 5.3 For UK Orders, the Buyer shall collect the Goods from Elta Fans' premises at Elta Fans Fareham or Kingswinford facilities as appropriate or such other location as may be advised by Elta Fans prior to delivery or, if agreed by Elta Fans, Elta Fans will deliver the Goods to some other place as agreed between the parties ("**Delivery Location**"). Collection or acceptance of delivery of the Goods by the Buyer must be made within three Business Days of Elta Fans notifying the Buyer that the Goods are ready.
- 5.4 Unless otherwise agreed, delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 5.5 Unless otherwise agreed with Elta Fans, Elta Fans' carriers shall not be responsible for loading or off-loading of Goods at the Delivery Location.
- 5.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Elta Fans shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide Elta Fans with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.7 If Elta Fans fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Elta Fans 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 Buyer's failure to provide Elta Fans with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.8 If the Buyer fails to take or accept delivery of the Goods within three Business Days of Elta Fans notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Elta Fans' failure to comply with its obligations under the Contract:
- 5.8.1 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 Elta Fans notified the Buyer that the Goods were ready; and
 - 5.8.2 Elta Fans shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).

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- 5.9 If ten Business Days after the day on which Elta Fans notified the Buyer that the Goods were ready for delivery the Buyer has not taken or accepted delivery of them, Elta Fans may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.
- 5.10 If Elta Fans delivers up to and including 5% more or less than the quantity of Goods ordered the Buyer may not reject them, but on receipt of notice from the Buyer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice, provided that Elta Fans has received notice from the Buyer of such wrong quantity within forty-eight (48) hours of delivery of the Goods.
- 5.11 Elta Fans 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 Buyer to cancel any other instalment.
- 6. Quality of Goods**
- 6.1 Elta Fans warrants that on delivery and, unless otherwise confirmed by Elta Fans in writing, for a period of 12 months from the date of delivery ("**Warranty Period**"), the Goods shall:
- 6.1.1 conform in all material respects with the Goods Specification; and
- 6.1.2 be free from material defects in design, material and workmanship.
- 6.2 Subject to clause 6.3, if:
- 6.2.1 the Buyer gives notice in writing to Elta Fans 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 clause 6.1;
- 6.2.2 Elta Fans is given a reasonable opportunity of examining such Goods; and
- 6.2.3 the Buyer (if asked to do so by Elta Fans) returns such Goods to Elta Fans' place of business at the Buyer's cost together with a full record and proof of any servicing, maintenance, repairs, modifications or alterations carried out on the Goods during the Warranty Period,
- Elta Fans shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 6.3 Elta Fans shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:
- 6.3.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 6.2;
- 6.3.2 the defect arises because the Buyer failed to follow Elta Fans' oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 6.3.3 the defect arises as a result of Elta Fans following any drawing, design or specification supplied by the Buyer;
- 6.3.4 the Buyer alters or repairs such Goods without the written consent of Elta Fans;
- 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 6.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 Except as provided in this clause 6, Elta Fans shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- 6.5 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.
- 6.6 These Conditions shall apply to any repaired or replacement Goods supplied by Elta Fans.
- 7. Free Issue Materials**
- 7.1 All Free Issue Materials shall be at the risk of the Buyer and insured by the Buyer at its own expense.
- 7.2 The Buyer shall indemnify Elta Fans against any loss, damage, injury or expense whatsoever arising directly or indirectly from the supply or use of the Free Issue Materials, including, in connection with any claim made against Elta Fans for actual or alleged infringement of a third party's intellectual property rights.

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- 7.3 The Free Issue Materials shall be provided to Elta Fans in good order and condition. Any Free Issue Materials that are defective or damaged due to bad workmanship or the fault of the Buyer shall be repaired or replaced at the Buyer's expense.
- 7.4 The Buyer shall be responsible to ensure that the Free Issue Materials are complete and accurate, of satisfactory quality and are fit for its purpose and shall indemnify Elta Fans against any loss damage, injury or expenses whatsoever arising directly or indirectly from any fault in or incorrect specification of the said materials.

8. Buyer's Obligations

- 8.1 The Buyer shall:
- 8.1.1 ensure that the terms of the Order and the Goods Specification and/or Scope of Works are complete and accurate;
 - 8.1.2 co-operate with Elta Fans in all matters relating to the Services;
 - 8.1.3 have sole responsibility for seeking any necessary Approvals for any Goods, Services and/or Design & Application Advice before placing an Order with Elta Fans and shall indemnify Elta Fans against all and any costs Elta Fans incurs as a result of the Buyer's failure to obtain the necessary Approvals;
 - 8.1.4 provide Elta Fans, its employees, agents, consultants and subcontractors, with access to the Buyer's Premises as reasonably required by Elta Fans to provide the Services;
 - 8.1.5 provide Elta Fans with such information and materials as Elta Fans may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 8.1.6 prepare the Buyer's Premises for the supply of the Services;
 - 8.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for use of the Goods or the Services which shall be obtained before the date on which the Goods are to be used or Services are to start (as applicable);
 - 8.1.8 keep and maintain all materials, equipment, documents and other property of Elta Fans ("**Elta Fans Materials**") at the Buyer's Premises in safe custody at its own risk, maintain Elta Fans Materials in good condition until returned to Elta Fans, and not dispose of or use Elta Fans Materials other than in accordance with Elta Fans' written instructions or authorisation;
 - 8.1.9 not make any alteration to the Buyer's Premises, including the use of any of the same, in such a way that Elta Fans' provision of the Services may be affected between the date of the quotation and the date of delivery of the Services;
 - 8.1.10 provide Elta Fans with use of the power and lighting supply and other utilities at the Buyer's Premises in connection with its provision of the Services free of charge;
 - 8.1.11 provide Elta Fans with all health and safety information and procedures from time to time in force at the Buyer's Premises; and
 - 8.1.12 comply with all applicable laws, statutes and regulations including in relation to anti-bribery and anti-corruption.
- 8.2 If Elta Fans' performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("**Buyer Default**"):
- 8.2.1 Elta Fans shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays Elta Fans' performance of any of its obligations;
 - 8.2.2 Elta Fans shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from Elta Fans' failure or delay to perform any of its obligations in respect of the Services; and
 - 8.2.3 the Buyer shall reimburse Elta Fans on written demand for any costs or losses sustained or incurred by Elta Fans arising directly or indirectly from the Buyer Default.

9. Inspection and Testing

- 9.1 The Goods will be, so far as is practicable, submitted to Elta Fans' standard tests at Elta Fans' premises prior to despatch.
- 9.2 If the Buyer requires alternative tests to those specified in Elta Fans' quotation or if the Buyer or the Buyer's representatives request to be

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present during the testing and/or inspection, additional charges will apply and any agreed delivery date for the Goods shall be extended to include the time required to conduct such tests.

- 9.3 If, having requested to attend the testing and/or inspection of the Goods, the Buyer or its representative(s) fails to attend the tests and/or inspection, the testing and/or inspection will proceed in the Buyer or the Buyer's representatives' absence and shall be deemed to have been made in the Buyer or its representatives' presence.
- 9.4 All performance figures supplied by Elta Fans relating to the Goods are based upon Elta Fans' experience and represent the figures Elta Fans expects to obtain in its laboratory to the relevant test standard applicable to the product type and, where applicable, confirmed within the Goods Specification.

10. Title and Risk

- 10.1 The risk in the Goods shall pass to the Buyer on completion of delivery as set out in clause 5.4.
- 10.2 Title to the Goods shall not pass to the Buyer until the earlier of:
- 10.2.1 Elta Fans receives payment in full (in cash or cleared funds) for the Goods and any other goods that Elta Fans has supplied to the Buyer; and
 - 10.2.2 the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in clause 10.4.
- 10.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
- 10.3.1 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as Elta Fans' property;
 - 10.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 10.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 10.3.4 notify Elta Fans immediately if it becomes subject to any of the events listed in clause 13.3; and
 - 10.3.5 give Elta Fans such information relating to the Goods as Elta Fans may require from time to time.
- 10.4 Subject to clause 10.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Elta Fans receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- 10.4.1 it does so as principal and not as Elta Fans' agent; and
 - 10.4.2 title to the Goods shall pass from Elta Fans to the Buyer immediately before the time at which resale by the Buyer occurs.
- 10.5 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 13.3, then, without limiting any other right or remedy Elta Fans may have:
- 10.5.1 the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 10.5.2 Elta Fans may at any time:
 - (a) require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (b) if the Buyer fails to do so promptly, enter any of the Buyer's Premises where the Goods are stored in order to recover them.

11. Supply of Services

- 11.1 Elta Fans shall provide the Services to the Buyer in accordance with the Scope of Works in all material respects.
- 11.2 Elta Fans shall use all reasonable endeavours to meet any performance dates for the Services specified in Elta Fans' quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 11.3 Elta Fans shall have the right to make any changes to the Services which are necessary to comply with any applicable law or regulatory or safety requirement, or which do not materially affect the nature or quality of the Services, and Elta Fans shall notify the Buyer in any such event.
- 11.4 Elta Fans warrants that the Services shall conform in all material respects with the Scope of Works for a period of 12 months from the date

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of performance of the Services. Where Elta Fans is not the provider of the Services, Elta Fans shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to Elta Fans.

11.5 The terms implied by sections 13 to 15 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

11.6 Elta Fans reserves the right to sub-contract any or all of its obligations in connection to the performance of the Services.

12. Price and Payment

12.1 The price of the Goods shall be the price set out in Elta Fans' quotation, or, if no price is quoted, the price set out in Elta Fans' published price list in force as at the date of delivery. The charges for Services shall be calculated in accordance with Elta Fans' standard daily fee rates, as set out in Elta Fan's quotation, unless otherwise agreed in the Scope of Work.

12.2 Elta Fans reserves the right to increase its standard daily fee rates for the Services at any time before performance of the Services upon 14 days' notice to the Buyer.

12.3 Elta Fans may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

12.3.1 any factor beyond Elta Fans' control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

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

12.3.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give Elta Fans adequate or accurate information or instructions.

12.4 The price of the Goods and/or Services excludes:

12.4.1 the amounts in respect of value added tax (**VAT**), which the Buyer shall additionally be liable to pay to Elta Fans at the prevailing rate, subject to the receipt of a valid VAT invoice; and

12.4.2 the costs and charges of non-standard packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer; and

12.4.3 any expenses reasonably incurred by Elta Fans in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Elta Fans for the performance of the Services, and for the cost of any materials.

12.5 If Elta Fans incurs any extra costs between the date of the quotation and the date of despatch of the Goods owing to delay in starting work or suspension of the work due to the Buyer's instructions or inadequacy or absence of instructions, rectification of errors in drawings or Goods Specification/Scope of Works provided by the Buyer, or any other cause for which the Buyer (or any other party employed by the Buyer) is responsible, Elta Fans shall be entitled to charge the Buyer for those extra costs incurred.

12.6 Elta Fans may invoice the Buyer for the Goods on or at any time after the completion of delivery. Unless as otherwise agreed in the Scope of Works, Elta Fans may invoice the Buyer for the Services at the end of each month in which the relevant Services are performed.

12.7 Subject to any special payment terms agreed in writing between the Buyer and Elta Fans, the Buyer shall pay the invoice in full and in cleared funds within 30 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Elta Fans. Time of payment is of the essence.

12.8 If the Buyer fails to make any payment due to Elta Fans under the Contract by the due date for payment, then Elta Fans shall be entitled to:

12.8.1 cancel the Contract or suspend any further deliveries to the Buyer;

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

12.8.3 charge the Buyer interest on the overdue amount at the rate of 8% per annum above the Bank of England'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 Buyer shall pay the interest together with the overdue amount.

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- 12.9 The Buyer 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). Elta Fans may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by Elta Fans to the Buyer.
- 13. Term; Termination**
- 13.1 Unless as otherwise as agreed in the Scope of Services, the duration of the Services shall be as stated in Elta Fans' quotation.
- 13.2 Without affecting any right or remedy available to it, unless as otherwise as agreed in the Scope of Services, either party may terminate the Services by giving the other party not less than [thirty (30) days]' written notice.
- 13.3 Without limiting its other rights or remedies, Elta Fans may terminate this Contract with immediate effect by giving written notice to the Buyer if:
- 13.3.1 the Buyer fails to pay any amount due under this agreement on the due date for payment and remains in default for more than fourteen (14) days;
 - 13.3.2 the Buyer commits a material breach of any term of this agreement and (if that breach is remediable) fails to remedy that breach within thirty (30) days of that party being required in writing to do so;
 - 13.3.3 an order is made or a resolution is passed for the winding up of the Buyer, or an order is made for the appointment of an administrator to manage the affairs, business and property of the Buyer, or such an administrator is appointed, or a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court or a creditor to appoint a receiver or manager or which entitle a court to make a winding-up order, or the Buyer takes or suffers any similar or analogous action in consequence of debt, or an arrangement or composition is made by the Buyer with its creditors or an application to a court for protection from its creditors is made by the Buyer; or
 - 13.3.4 any Force Majeure Event prevents the other party from performing its obligations under this agreement for any continuous period of six (6) months;
 - 13.3.5 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - 13.3.6 the Buyer's financial position deteriorates to such an extent that in Elta Fans' opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 13.3.7 the Buyer purports to assign or otherwise transfer its rights or obligations under this agreement in breach of clause 17.1.
- 13.4 Without limiting its other rights or remedies, Elta Fans may suspend provision of the Goods or the Services under the Contract or any other contract between the Buyer and Elta Fans if the Buyer becomes subject to any of the events listed in clause 13.3.1 to clause 13.3.6, or Elta Fans reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 13.5 Without limiting its other rights or remedies, Elta Fans may terminate the Contract with immediate effect by giving written notice to the Buyer 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 14 days after being notified in writing to make such payment.
- 13.6 On termination of the Contract for any reason the Buyer shall immediately pay to Elta Fans all of Elta Fans' outstanding unpaid invoices and interest.
- 13.7 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.
- 13.8 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.
- 14. Limitation of Liability**
- 14.1 Nothing in these Conditions shall limit or exclude Elta Fans' liability for:
- 14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 14.1.2 fraud or fraudulent misrepresentation; or

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14.1.3 any matter in respect of which it would be unlawful for Elta Fans to exclude or restrict liability.

14.2 Subject to clause 14.1:

14.2.1 Elta Fans shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of production, inability to occupy or delay in the ability to occupy any of the Buyer's Premises (by humans or livestock) in which the Goods are installed or are to be installed or the Services are to be provided, or any indirect or consequential loss arising under or in connection with the Contract; and

14.2.2 Elta Fans' total liability to the Buyer 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 amount paid by the Buyer for the Goods and Services under this Contract.

15. Data Protection

15.1 The Buyer and Elta Fans acknowledge that for the purposes of the Data Protection Act 1998, the Buyer is the Data Controller and Elta Fans is the data processor in respect of any Personal Data.

15.2 Elta Fans shall process the Personal Data only in accordance with the Buyer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Buyer.

15.3 Elta Fans shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

15.4 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

15.5 Elta Fans warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:

15.5.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

(a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

(b) the nature of the data to be protected; and

15.5.2 take reasonable steps to ensure compliance with those measures.

15.6 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 15.

15.7 The Buyer acknowledges that Elta Fans is reliant on the Buyer for direction as to the extent to which Elta Fans is entitled to use and process the Personal Data. Consequently, Elta Fans will not be liable for any claim brought by a Data Subject arising from any action or omission by Elta Fans, to the extent that such action or omission resulted directly from the Buyer's instructions.

15.8 Elta Fans may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:

15.8.1 is on terms which are substantially the same as those set out in this agreement; and

15.8.2 terminates automatically on termination of this agreement for any reason.

16. Force Majeure

16.1 A party shall be deemed not to be in default with respect to non-performance of any of its obligations under this agreement, if and so long as such non-performance is due in whole or in some material way to an event of Force Majeure and that party has used its commercially reasonable efforts to mitigate the effects of the event of Force Majeure and to perform its obligations under the agreement. If an event of Force Majeure occurs, the party affected shall promptly notify the other party of the occurrence of the event, its extent and probable duration and shall use its best endeavours to overcome the difficulties created thereby and to resume performance of its obligations as soon

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as practicable.

17. General

17.1 Assignment and other dealings

17.1.1 Elta Fans 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.

17.1.2 The Buyer 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 Elta Fans.

17.2 Confidentiality

17.2.1 Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination of this agreement, disclose to any person any Confidential Information, except as permitted by clause 17.2.2.

17.2.2 Each party may disclose the other party's confidential information:

(a) 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 agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 17.2; and

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

17.2.3 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 agreement.

17.2.4 The obligations contained in this clause 17.2 shall not apply to any Confidential Information which:

(a) is publicly known at the time of disclosure to the receiving party; or

(b) becomes publicly known otherwise than through a breach of this agreement by the receiving party, its officers, employees, agents or contractors; or

(c) can be proved by the receiving party to have reached it otherwise than by being communicated by the other party including:

(i) being known to it prior to disclosure; or

(ii) having been developed by or for it wholly independently of the other party; or

(iii) having been obtained from a third party without any restriction on disclosure on such third party of which the recipient is aware, having made due enquiry.

17.2.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement.

17.3 Entire agreement

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

17.3.2 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 agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

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

17.5 **Waiver** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

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17.5.1 waive that or any other right or remedy; nor

17.5.2 prevent or restrict the further exercise of that or any other right or remedy.

17.6 **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 clause shall not affect the validity and enforceability of the rest of the Contract.

17.7 **Notices**

17.7.1 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 clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

17.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.7.1; 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; or, if sent by email, one Business Day after transmission.

17.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17.8 **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.

17.9 **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.

17.10 **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.

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