

## ELECOSOFT CONDITIONS OF SUPPLY FOR SOFTWARE AND SERVICES

The Client's attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 DEFINITIONS:

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

**Commencement Date:** has the meaning given in: Clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.8.

**Contract:** the contract between Elecosoft and the Client for the supply of Services and/or the licence of Software in accordance with these Conditions.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Client:** the person or firm who purchases Services and/or a Software Licence from Elecosoft.

**Deliverables:** the deliverables set out in the Order produced by Elecosoft for the Client but specifically excluding the Software and any Training Materials.

**Elecosoft:** Elecosoft UK Limited registered in England and Wales with company number 2021387 whose registered office is at Parkway House, Pegasus Way, Haddenham Business Park, Haddenham, Bucks, HP17 8LJ.

**Force Majeure Event:** has the meaning given to it in clause 14.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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 Client's order for the supply Services and/or the licence of Software, as set out in the Client's purchase order form, or the Client's written acceptance of Elecosoft's quotation, or overleaf, as the case may be.

**Services:** the services, including the Deliverables, supplied by Elecosoft to the Client as set out in the Service Specification.

**Service Specification:** the description or specification for the Services as set out in the Order.

**Software:** the software identified in the Order.

**Software Licences:** a licence to use the Software on the licence terms referred to in the Order and/or as delivered with the Software.

**Software Specification:** the specification for the Software, as set out in the Order.

**Training Materials:** any materials provided to a delegate attending a training course.

Interpretation:

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a party includes its successors and permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 A reference to **writing** or **written** includes fax and email.

### 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Client to purchase the Services and/or a licence of the Software in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of: a) Elecosoft issuing written acceptance of the Order; or b) Elecosoft issuing an invoice in

relation to the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by Elecosoft and any descriptions of the Software or illustrations or descriptions of the Services contained in Elecosoft's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Software described in them. They shall not form part of the Contract or have any contractual force. Any advice or recommendation given by Elecosoft, its employees or agents to the Client as to the storage, application or use of the Software or the provision of the Services which is not referred to in the Software Specification or the Services Specification or referred to in the Order does not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by Elecosoft shall not constitute an offer, and is only valid for a period of 30 days from its date of issue. After expiry of the 30 day period, Elecosoft may alter such prices without notice to the Client.

2.6 All of these Conditions shall apply to the supply of Services and the licence of Software except where application to one or the other is specified.

2.7 No Order which has been accepted by Elecosoft may be cancelled by the Client except with Elecosoft's agreement in writing and on terms that the Client shall indemnify Elecosoft 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 Elecosoft as a result of cancellation in which case the Client shall pay Elecosoft's invoice for such costs incurred within 7 days of its date.

2.8 Requests for cancellation of training Services will only be accepted if received more than 20 days before the course start date. If cancellation notice is received 20 days or less before a course start date or if a delegate fails to attend, all training fees remain payable. Elecosoft reserves the right to cancel a training course at any time without liability and in these circumstances, delegates will be offered an alternative date, credit note or full refund.

### 3. SOFTWARE

3.1 Elecosoft shall deliver one copy of the Software electronically to the Client at the address identified in the Order within a reasonable time of Elecosoft's acceptance of the Order. The Software shall be supplied and licensed to the Client on the basis of the Software Licence as more particularly described in the Order.

3.2 The terms of the Software Licence supplied with the Software and/or as referred to in the Order shall apply to the Client's use of the Software. To the extent that there is a conflict between these Conditions and the terms of the Software Licence, the Software Licence shall prevail and take precedence.

3.3 The Software Licence contains warranties as to the functionality of the Software.

### 4. SUPPLY OF SERVICES

4.1 Elecosoft shall supply the Services to the Client in accordance with the Order and the Service Specification in all material respects.

4.2 Elecosoft reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Elecosoft shall notify the Client in any such event.

4.3 Elecosoft warrants to the Client that the Services will be provided using reasonable care and skill.

### 5. DELIVERY AND PERFORMANCE

5.1 Any dates quoted for delivery of the Software or performance of the Services are approximate only, and the time of delivery or performance is not of the essence. Elecosoft shall not be liable for any delay in delivery of the Software or performance of the Services that is caused by a Force Majeure Event or the Client's failure to provide Elecosoft with adequate delivery instructions or any other instructions that are relevant to the delivery of the Software or performance of the Services.

5.2 If Elecosoft fails to deliver the Software or perform the Services, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement software or services of similar description and quality in the cheapest market available, less the price of the Software and/or Services. Elecosoft shall have no liability for any failure to deliver the Software or perform the Services to the extent that such failure is caused by a Force Majeure Event or the Client's failure to provide Elecosoft with adequate delivery instructions for

the Software or performance of the Services or any relevant instruction related to the provision of the Software and Services.

5.3 Where the Software is to be delivered and/or Services are to be provided in instalments each delivery or performance shall constitute a separate contract and failure by Elecosoft to deliver or provide any one or more of the instalments in accordance with these Conditions or any claim by the Client in respect of any one or more instalments shall not entitle the Client to treat the Contract as a whole as repudiated.

## 6. CLIENT'S OBLIGATIONS

6.1 The Client shall:

- (a) ensure that the terms of the Order and any information it provides in the Service Specification and the Software Specification are complete and accurate;
- (b) co-operate with Elecosoft in all matters relating to the Services;
- (c) provide Elecosoft, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by Elecosoft to provide the Services;
- (d) where the Services include installation of the Software, ensure that suitable computer hardware is available and that all necessary operating systems and other software is available and properly installed on the relevant hardware;
- (e) provide Elecosoft with such information and materials as Elecosoft may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (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) comply with all applicable laws, including health and safety laws; and
- (h) comply with any additional obligations as set out in the Order.

6.2 If Elecosoft's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) without limiting or affecting any other right or remedy available to it, Elecosoft shall have the right to suspend performance of the Services or access to the Software until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Elecosoft's performance of any of its obligations;
- (b) Elecosoft shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Elecosoft's failure or delay to perform any of its obligations as set out in this clause 6.2; and
- (c) the Client shall reimburse Elecosoft on written demand for any costs or losses sustained or incurred by Elecosoft arising directly or indirectly from the Client Default.

## 7. CHARGES AND PAYMENT

7.1 The price for the Software and/or the Services shall be as set out in the Order.

7.2 Subject to any special terms agreed in writing between Elecosoft and the Client, Elecosoft shall be entitled to invoice the Client for the price on or at any time after the Order is accepted unless payment is stated in the Order to be dependent on the performance of the Services.

7.3 The Client shall pay each invoice submitted by Elecosoft:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by Elecosoft and confirmed in writing to the Client; and
- (b) in full and in cleared funds to a bank account nominated in writing by Elecosoft, and

time for payment shall be of the essence of the Contract.

7.4 All amounts payable by the Client 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 Elecosoft to the Client, the Client shall, on receipt of a valid VAT invoice from Elecosoft, pay to Elecosoft such additional amounts in respect of VAT as are chargeable on the supply of the Services or licence of Software at the same time as payment is due for the supply of the Services or the licence of Software.

7.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 8. INTELLECTUAL PROPERTY RIGHTS

8.1 The Client acknowledges that all Intellectual Property Rights in the Software and any releases of the Software belong and shall belong to Elecosoft or the relevant third-party owners (as the case may be), and the Client shall have no rights in or to the Software other than the right to use it in accordance with the terms of the Software Licence.

8.2 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by

the Client) shall be owned by Elecosoft.

8.3 Elecosoft grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.

8.4 The Client shall not sub-license, assign or otherwise transfer the rights granted by clause 8.3.

8.5 Each delegate of a training course shall be entitled to use any Training Materials for their intended purpose and the Training Materials should not be copied or otherwise reproduced without Elecosoft's written permission.

## 9. DATA PROTECTION & INFORMATION SECURITY

9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation and Elecosoft agrees to process personal data in accordance with the Elecosoft Privacy Policy available at <https://www.elecosoft.com/privacy-and-cookies-policy/> as amended from time to time.

9.2 Elecosoft takes commercially reasonable technical and organisational measures in respect of information security, as documented in its Information Management System

## 10. CONFIDENTIALITY

10.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.

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

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

11.1 The following provisions set out the entire financial liability of Elecosoft (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

- (a) any breach of the Contract howsoever arising;
- (b) any use made by the Customer of the Services, the Software, the Deliverables or any part of them; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these conditions excludes the Elecosoft's liability:

- (a) for death or personal injury caused by Elecosoft's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

11.4 Subject to clause 11.2 and clause 11.3:

(a) the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

- (i) loss of profits; or
- (ii) loss of business; or
- (iii) depletion of goodwill or similar losses; or
- (iv) loss of anticipated savings; or
- (v) loss of goods; or
- (vi) loss of contract; or
- (vii) loss of use; or
- (viii) loss or corruption of data or information; or
- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) Elecosoft's liability for damage to tangible property resulting from Elecosoft's negligence and/or any negligent act or omission of Elecosoft or its employees, agents and sub-contractors shall be limited to £1,000,000 in respect of any one incident and £2,000,000 in respect of any series of incidents arising from a common cause;

(c) Elecosoft's liability in respect of all other claims, losses or damages whether arising in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the aggregate of the price paid by the Client under the Contract.

11.5 Elecosoft has given commitments as to compliance of the Services with relevant specifications in clause 4. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

11.6 The Software Licence contains warranties as to the functionality of the Software and as such all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Contract or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

11.7 This clause 11 shall survive termination of the Contract.

## 12. TERMINATION

12.1 Without affecting any other right or remedy available to it, 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 its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

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

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

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

12.2 If the Client fails to pay any amount due under the Contract or any other contract between the parties on the due date for payment, Elecosoft shall be entitled to:

(a) terminate the Contract with immediate effect by giving written notice to the Client; and/or

(b) appropriate any payment made by the Client to such of the Software or Services (or the software or services supplied under any other contract between the Client and Elecosoft) as Elecosoft may think fit (notwithstanding any purported appropriation by the Client).

12.3 Without affecting any other right or remedy available to it, Elecosoft may suspend the supply of Services under the Contract or any other contract between the Client and Elecosoft if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 12.1(b) to clause (d), or Elecosoft reasonably believes that the Client is about to become subject to any of them.

## 13. CONSEQUENCES OF TERMINATION

13.1 On termination of the Contract:

(a) the Client shall immediately pay to Elecosoft all of Elecosoft's outstanding unpaid invoices and interest and, in respect of Services and Software supplied but for which no invoice has been submitted, Elecosoft shall submit an invoice, which shall be payable by the Client immediately on receipt;

(b) the Client shall return all of Elecosoft Materials and any Deliverables have not been fully paid for. If the Client fails to do so, then Elecosoft may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

(c) all rights granted to the Client in respect of the Software which have not been paid for shall cease, the Client shall cease all activities authorised by the Software Licence and the Client shall immediately uninstall the Software and destroy or return to Elecosoft all copies of the Software then in its possession, custody and control and, in the case of destruction, certify to Elecosoft that it has done so.

13.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 14. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).

## 15. GENERAL

### 15.1 Assignment and other dealings

(a) Elecosoft may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

(b) The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Elecosoft.

### 15.2 Notices.

(a) Any notice to a party under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid recorded delivery or by commercial courier, to each party required to receive the notice at its registered office or principal place of business or as otherwise specified by the relevant party by notice in writing to each other party. A notice shall be deemed to have been duly received at the time of delivery, if delivered personally or by courier, or 2 Business Days after posting for an address in the United Kingdom and 5 Business Days after posting for any other address.

(b) A notice given under this agreement is not valid if sent by email.

15.3 **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.

15.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

15.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

### 15.6 Entire agreement.

(a) The 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.

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

(c) Nothing in this clause shall limit or exclude any liability for fraud.

### 15.7 Third parties rights.

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

15.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

15.9 **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.

15.10 **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 the Contract or its subject matter or formation.