

# Terms and Conditions

## CONDITIONS OF QUOTATION OR ESTIMATE AND ANY CONTRACT WHICH MAY RESULT THERE FROM

1. In these conditions
  - (a) "The company" means Evolve Security Products Limited, or ESP
  - (b) "Purchaser" means the company, firm or individual who purchases the goods from ESP.
  - (c) "Business Day" means a day other than a Saturday, Sunday, or a public holiday.
  - (d) "Commissioning" means the goods have been installed and commissioned ready for use.
  - (e) "Goods" means the goods (or any part of them) set out in the quotation and any subsequent order.
  - (f) "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
  - (g) "Commencement Date" has the meaning set out in clause 2.2
  - (h) "Order" means the Acknowledgement of Terms agreed by both ESP and the "Purchaser".
2.
  - (a) Contracts are made and orders are accepted only upon these conditions. Any other terms or conditions proposed will only apply if they are formerly accepted by the company in a letter or facsimile transmission that expressly refer to them.
  - (b) The "Order" shall only be deemed to be accepted when ESP acknowledges it at which point, and on which date the Contract shall come into existence "Commencement Date".
  - (c) Any samples, drawings, descriptive material, or advertising issued by ESP and any descriptions of the Goods in ESP catalogues, brochures and data sheets are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
  - (d) Any Quote given by ESP shall not constitute an offer, and the prices and other specifications identified on it will be current for the number of days specified on the face of the Quote.
3. Goods
  - (a) The Goods are described in the Quote.
  - (b) ESP reserves the right to amend the specification of the Goods if required.
4. Delivery of Goods

ESP will notify the Purchaser that the Goods are ready for collection.
5. Quality of Goods

ESP warrants that on despatch of the goods and for a period of 12 months from the date of despatch ('Warranty Period'), the Goods shall:

  - (a) Conform in all material respects with their description and any applicable Goods Specification.
  - (b) Be free from material defects in material and workmanship.
  - (c) Be of merchantable quality (within the meaning of the Sale of Goods Act 1979).
6. Title and risk
  - (a) The risk in the Goods shall pass to the Purchaser on despatch of the goods. The purchaser shall keep the Goods secure, fully protected including from water ingress and other adverse weather conditions and insured whilst any installation works are undertaken and before commissioning.
  - (b) Title to the Goods shall not pass to the Purchaser until ESP has received payment in full (in cash or cleared funds).
  - (c) Until title to the Goods has passed to the Purchaser, the Purchaser shall: -
    - I. Hold the Goods on a fiduciary basis as ESP bailee.
    - II. Hold the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as ESP Property.
    - III. Not remove, deface, or obscure any identifying mark or packaging on or relating to the Goods.
    - IV. Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on ESP behalf from the date of despatch.
  - (d) If before title to the Goods passes to the Purchaser clause 12.1.2 to clause 12.1.12, or ESP reasonably believes that any such event is about to happen and notifies the Purchaser accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy ESP may have, ESP may at any time require the Purchaser to deliver up the Goods and, if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.
7. The Purchaser shall:
  - (a) Ensure that the terms of the Order and (if submitted by the Purchaser) the Goods Specification are complete and accurate.
  - (b) Supply all necessary electricity, power, fire, and access control cables, ducts, and hardware.
  - (c) Ensuring that the goods are sited in a position satisfactory to the end user and ESP will accept no liability for loss or inconvenience to the purchaser arising from the positioning of the goods.
8. Charges and payment
  - (a) The price for Goods and any services shall be the price set out in the Quote ("the Price").
  - (b) The Price shall be paid (in cleared funds) in accordance with the terms set out in the Quote or in the absence of any relevant term in the Quote as follows: -
    - I. 30% of the Price on agreeing the Quote.
    - II. 40% of the Price 7 days in advance of the goods being ready of despatch.
    - III. 30% 30 days after the goods were ready for despatch.
    - IV. to the date on which it
  - (c) All payments should be made in cleared funds to a bank account nominated in writing by ESP.
  - (d) Time for payment shall be of the essence of the Contract.
  - (e) All amounts payable by the Purchaser 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 ESP to the Purchaser, the Purchaser shall, on receipt of a valid VAT invoice from ESP, pay to ESP such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.

- (f) Without limiting any other right or remedy of ESP, if the Purchaser fails to make any payment due to ESP under the Contract by the due date for payment ('Due Date'), ESP shall have the right to charge interest on the overdue amount at the rate of 8 per cent per annum accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

9. Intellectual property rights

- (a) All Intellectual Property Rights in or arising out of or in connection with the Goods shall be owned by ESP.  
(b) The Purchaser acknowledges that, in respect of any third-party Intellectual Property Rights in the Goods, the Purchaser's use of any such Intellectual Property Rights is conditional on ESP obtaining a written licence from the relevant licensor on such terms as will entitle ESP to license such rights to the Purchaser.  
(c) All ESP' Materials are the exclusive property of ESP.

10. Confidentiality

- (a) A party ('Receiving Party') shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ('Disclosing Party'), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents, or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 10 shall survive termination of the Contract.

11. Limitation of liability

- (a) Nothing in these Conditions shall limit or exclude ESP' liability for:  
I. Fraud or fraudulent misrepresentation.  
II. Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or  
III. Defective products under the Consumer Protection Act 1987.  
(b) Subject to clause 11.a  
I. ESP shall under no circumstances whatever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and  
II. ESP total liability to the Purchaser 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 Price.  
(c) Except as set out in these Conditions, all warranties, conditions, and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12. Termination

- (a) Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:  
I. The other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 60 days after receipt of notice in writing of the breach.  
II. The other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;  
III. The other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party].  
IV. A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party.  
V. The other party (being an individual) is the subject of a bankruptcy petition or order.  
VI. A creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration, or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 7 days.  
VII. An application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);  
VIII. A floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver.  
IX. A person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party  
X. Any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.a.II to clause 12.a.IX (inclusive);  
XI. The other party suspends, threatens to suspend, ceases, or threatens to cease to carry on, all or substantially the whole of its business; or  
XII. The other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.  
(b) Without limiting its other rights or remedies, ESP shall have the right to suspend all further deliveries of Goods under the Contract or any other contract between the Purchaser and ESP if:  
I. The Purchaser fails to make pay any amount due under this Contract on the due date for payment; or e other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 60 days after receipt of notice in writing of the breach.  
II. The Purchaser becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.12, or ESP reasonably believes that the Purchaser is about to become subject to any of them.

### 13. Consequences of termination

#### (a) On termination of the Contract for any reason:

- I. The Purchaser shall immediately pay to ESP all of ESP' outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has yet been submitted, ESP shall submit an invoice, which shall be payable by the Purchaser immediately on receipt.
- II. The Purchaser shall return all of ESP Goods which have not been fully paid for. If the Purchaser fails to do so, then ESP may enter the Purchaser's premises and take possession of them. Until they have been returned, the Purchaser shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- III. The accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- IV. Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

### 14. General

#### (a) Force majeure:

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

#### (b) Notices:

- I. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number, or sent by email.
- II. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- III. This clause 14.b shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

#### (c) Waiver and cumulative remedies

- I. A waiver of right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the
- II. Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

#### (d) Severance

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

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

#### (f) Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it

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

#### (h) Governing law and jurisdiction: Any dispute or difference arising out of or incidental to the contract shall be referred to the arbitration of a single arbitrator to be appointed in default of agreement by the president for the time being (or in his absence the vice president or in the absence of them both some duly appointed officer) of the Chartered Institute of Arbitrators in London. The rules of the London Court of Arbitration shall apply to the arbitration. The contract shall be governed by English law with exclusive jurisdiction to the courts in England.

#### (i) Liquidated damages, retentions, defects liability / rectification period and discounts are not accepted.