

TERMS OF SUPPLY

1. Interpretation

1.1 In these Terms the following terms shall (unless the context requires otherwise) bear the meanings set out opposite them:

"EFL"	Ecofirst Limited, a company registered in England with number 5830143;
"Contract"	the contract between EFL and the Customer for the supply and purchase of the Products and Services;
"Contract Price"	the total price for Products and Services specified on the relevant Quotation;
"Customer"	a person whose written order for Products and/or Services is accepted by EFL or (as the case may be) who has accepted EFL's written quotation for Products and/or Services;
"Customer Information"	any information concerning the Customer which is disclosed by the Customer to EFL or otherwise obtained by EFL in the course of the supply of the Products or the Services;
"Customer Order Form"	the order form attached to a copy of the Quotation, for signature by the Customer;
"Installation Date"	the date agreed for commencement of the Services as indicated on the Order Confirmation;
"Order Confirmation"	written confirmation from EFL to the Customer of the Order;
"Products"	the Products which EFL is to supply to the Customer in accordance with these Terms as detailed on the relevant Customer Order Form or Quotation;
"Quotation"	a written quotation in respect of Products and/or Services prepared by EFL for a Customer;
"Services"	the installation services to be provided by EFL to the Customer as detailed on the relevant Customer Order Form or Quotation;
"Terms"	the standard terms of supply set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Customer and EFL;
"Writing"	includes facsimile transmission, electronic mail and other forms of electronic communication.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 A reference in these Terms to any gender shall be deemed to include all genders.

1.4 The headings in these Terms are for convenience only and shall not affect their interpretation.

2. Basis of Supply

2.1 EFL shall supply and the Customer shall purchase those Products and Services set out on the relevant Quotation, subject to these Terms, which shall govern the Contract to the exclusion of any other terms upon which any order for Products and/or Services is made or purported to be made by the Customer, or any quotation from EFL is accepted or purported to be accepted by the Customer.

2.2 No variation to these Terms shall be binding unless agreed in writing between the Customer and EFL.

2.3 EFL's registered installers, employees or agents are not authorised to make any representations concerning the Products or Services unless confirmed by EFL in Writing. In entering into the Contract the Customer acknowledges that he does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by EFL or its registered installers, employees or agents to the Customer as to the storage, application or use of the Products which is not confirmed in Writing by EFL is followed or acted on entirely at the Customer's own risk, and accordingly EFL shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 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 EFL shall be subject to correction without any liability on the part of EFL.

3. Orders and Specifications

3.1 No order submitted by the Customer shall be deemed to be accepted by EFL unless and until confirmed in writing by EFL. Such confirmation shall usually be given by means of an Order Confirmation.

3.2 The quantity and description of the Products and any specification for them and their installation (where applicable) shall be as set out in EFL's quotation.

3.3 If the Products are to be installed or any process is to be applied to the Products in accordance with a particular specification submitted by the Customer, the Customer shall indemnify EFL against all loss, damages, costs and expenses awarded against or incurred by EFL in connection with, or paid or agreed to be paid by EFL in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from EFL's use of the Customer's specification.

3.4 EFL reserves the right to acquire similar Products from alternative manufacturers and/or to make any changes in the specification of the Products and/or any changes to the Services which are required to conform with any applicable statutory or safety requirements which do not materially affect the nature quality or performance of the Products or (where applicable) the Services.

3.5 No order which has been accepted by EFL may be cancelled by the Customer except with the agreement in Writing of EFL and on terms that the Customer shall indemnify EFL 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 EFL as a result of cancellation.

3.6 The Customer shall be responsible for

- obtaining all permission, consents and approvals including without prejudice any planning permission, listed building consent or Building Regulation approval necessary or advisable for the installation of the Products (including payment of any fees related to such applications)
- ensuring that EFL has all necessary access to the relevant property (including access to adjacent property where appropriate) for completion of the installation
- obtaining any necessary permissions for the erection of scaffolding for the purpose of the installation
- providing all necessary services and supplies (including electricity and water supplies, storage space and toilet facilities) reasonably necessary for the installation
- applying for any available grants in respect of the Products and/or Services and informing EFL of the same prior to commencement of the Services
- any remedial or redecoration work required following completion of the installation.

4. Price of Products and Services

4.1 The price of the Products and Services shall be EFL's quoted price (as set out in the Quotation) or where a quoted price is no longer valid, the price listed in EFL's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only from receipt by the Customer of the Quotation after which time they may be altered by EFL without giving notice to the Customer.

4.2 EFL reserves the right, by giving Written notice to the Customer at any time before delivery, to increase the price of the Products and/or Services to reflect any increase in cost to EFL which is due to any factor beyond the control of EFL (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Products and/or Services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give EFL adequate information or instructions.

4.3 Any adjustment of the Contract Price necessitated by any variation of work during the course of the Contract, by any additional work required due to factors which could not reasonably have been foreseen prior to the contract hereof entered into, or by failure of the Customer to comply with his obligation under clause 3.6, shall be charged on a day work basis or at a unit rate, whichever may be appropriate. The signature of the Customer (or his representative on site) on the Additional Works Sheet shall constitute valid order additions, variations or additional work at rates as appropriate.

4.4 The price quoted for the Products and the Services is (unless otherwise stated) exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to EFL.

5. Terms of Payment

5.1 Subject to any special terms agreed in Writing between EFL and the Customer, the Customer shall pay to EFL:

5.1.1 10% of the price of the Products (plus value added tax where applicable), as specified on the Customer Order Form, upon submission of the order by the Customer;

5.1.2 the balance of the price of the Products (plus value added tax where applicable), as specified on the Customer Order Form, within

- 7 days from receipt by the Customer of EFL's invoice (which will be before the agreed installation date) unless the Products are to be installed by the Customer or the Customer wrongfully fails to take delivery of the Products, in which event EFL shall be entitled to invoice the Customer for the price at any time after EFL has notified the Customer that the Products are ready for collection or (as the case may be) EFL has tendered delivery of the Products;
- 5.1.3 the price of the Services (plus value added tax where applicable), as specified on the Customer Order Form, within seven days from receipt by the Customer of EFL's invoice which will be rendered on completion of the Services.
- 5.2 The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request.
- 5.3 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to EFL, EFL may charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 3 per cent per annum above Barclays Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 6. Delivery of Products**
- 6.1 Any dates given for delivery of the Products or commencement or completion of the Services are approximate only and EFL shall not be liable for any delay in delivery of the Products or performance of the Services however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by EFL in Writing. The Products may be delivered by EFL in advance of the quoted delivery date, and/or the Services may be commenced by EFL's registered Installer in advance of the quoted commencement date, on giving reasonable notice to the Customer.
- 6.2 If the Customer fails to take delivery of the Products or fails to give EFL adequate delivery instructions at the time stated for delivery or fails to make appropriate access arrangements to permit commencement of the Services (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of EFL's fault) then, without limiting any other right or remedy available to EFL, EFL may:
- 6.2.1 store the Products until actual delivery and charge the Customer for the reasonable cost (including insurance) of storage; or
- 6.2.2 sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 7. Installation Services**
- 7.1 The Services shall be carried out by EFL's registered installers in accordance with EFL's published literature from time to time, subject to these Terms.
- 8. Risk and Property**
- 8.1 Risk of damage to or loss of the Products shall pass to the Customer at the time of delivery, or if the Customer wrongfully fails to take delivery of the Products, the time when EFL has tendered delivery of the Products.
- 8.2 Notwithstanding delivery and passing of risk in the Products, or any other provision of these Terms, the property in the Products shall not pass to the Customer until EFL has received in cash or cleared funds payment in full of the price of the Products and all other Products agreed to be sold by EFL to the Customer for which payment is then due.
- 8.3 Until such time as the property in the Products passes to the Customer, the Customer shall hold the Products as EFL's fiduciary agent and bailee, and shall keep the Products separate from those of the Customer and third parties and properly stored, protected and insured and identified as EFL's property, but the Customer may resell or use the Products in the ordinary course of its business.
- 8.4 Until such time as the property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold), EFL may at any time require the Customer to deliver up the Products to EFL and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the Products are stored and repossess the Products.
- 8.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of EFL, but if the Customer does so all moneys owing by the Customer to EFL shall (without limiting any other right or the remedy of EFL) forthwith become due and payable.
- 9. Warranties and Liability**
- 9.1 The Customer shall be entitled to the benefit of a warranty from EFL as detailed in EFL's warranty document which shall be delivered to the Customer on completion of the Services.
- 9.2 Except as expressly provided in these Terms and in the Warranty document referred to in clause 9.1 above, and except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.3 Where the Products are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.
- 9.4 A claim by the Customer which is based on the quality of the services or any defect in the quality or condition of the Products or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to EFL within seven days from the date of performance of the Service or (in the case of the Products), delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery of Products is not refused, and the Customer does not notify EFL accordingly, the Customer shall not be entitled to reject the Products and EFL shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Products had been delivered in accordance with the Contract.
- 9.5 Except in respect of death or personal injury caused by EFL's negligence, or liability for defective products under the Consumer Protection Act 1987, EFL shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of EFL, its employees or agents or otherwise), which arise out of or in connection with the supply of the Products or Services (including any delay in supplying or any failure to supply the Products or to perform the Services in accordance with the Contract or at all) or the use or resale of the Products by the Customer, and the entire liability of EFL under or in connection with the Contract shall not exceed the total Contract price except as expressly provided in these Terms.
- 9.6 EFL shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of EFL's obligations in relation to the Products or Services, if the delay or failure was due to any cause beyond EFL's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond EFL's reasonable control:
- 9.6.1 act of God, explosion, flood, tempest, tsunami, fire or accident;
- 9.6.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 9.6.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.6.4 import or export regulations or embargoes;
- 9.6.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving registered installers or employees of EFL or of a third party);
- 9.6.6 power failure or breakdown in machinery.
- 10. Data Protection**
- 10.1 By entering into the Contract the Customer acknowledges that his Customer Information will be processed by EFL and agrees that such Customer Information may be passed by EFL to its employees, installers, sub contractors, service providers and agents (including marketing agents), assignees and/or any relevant trade bodies (together referred to in this clause as "Relevant Third Parties"), in order to enable EFL to carry out its obligations and pursue its rights under the Contract and for the purposes of risk assessment, after sales service, system testing, account history analysis, the detection and prevention of fraud, market research and (unless the Customer has completed the opt-out box on the Customer Order Form) the marketing of any products or services of EFL or of any Relevant Third Parties.
- 10.2 We will make a search with a credit reference agency, which will keep a record of that search and will share the information with other businesses. We may also make enquiries about the principal directors with a credit reference agency.
- 11. General**
- 11.1 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.2 No waiver by EFL of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 11.4 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.