

EMR Integrated Solutions – Terms & Conditions of Sale

1. Definitions

- 1.1 "Contractor" shall mean MP&E Trading Company Limited, t/a EMR Integrated Solutions ("EMR"), its successors and assigns or any person acting on behalf of and with the authority of EMR.
- 1.2 "Client" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Contractor to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Contractor to the Client.
- 1.5 "Services" shall mean all services supplied by the Contractor to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods and/or Services as agreed between the Contractor and the Client subject to clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Contractor from the Client for the supply of Goods and/or Services and/or the Client's acceptance of Goods and/or Services supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of the Contractor.
- 2.4 The Client undertakes to give the Contractor at least fourteen (14) days notice of any change in the Client's name, address and/or any other change in the Client's details.

3. Price and Payment

- 3.1 At the Contractor's sole discretion the Price shall be either;
 - a) as indicated on invoices provided by the Contractor to the Client in respect of Goods and/or Services supplied; or
 - b) the Contractor's quoted Price (subject to clause 3.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.
- 3.2 The Contractor reserves the right to change the Price in the event of a variation to the Contractor's quotation.
- 3.3 At the Contractor's sole discretion a retainer may be required.
- 3.4 Time for payment for the Goods and/or Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.5 At the Contractor's sole discretion;
 - a) payment shall be due on delivery of the Goods and/or Services, or
 - b) payment shall be due before delivery of the Goods and/or Services, or
 - c) payment for approved Clients shall be made by instalments in accordance with the Contractor's payment schedule.
- 3.6 Sign-off by the Client's of the Contractor's Site Instruction sheet and/or Day Work Sheet is acceptance by the Client of the Contractor's charge for the Goods and/or Services contained therein. An invoice shall be raised by the Contractor detailing the Goods and/or Services provided and this invoice becomes immediately payable in accordance with the relevant payment terms as previously agreed between the Contractor and the Client.
- 3.7 Payment will be made by cheque, or by direct credit, or by any other method as agreed to between the Client and the Contractor.
- 3.8 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods and/or Services

- 4.1 At the Contractor's sole discretion delivery of the Goods and/or Services shall take place when the Client takes possession of the Goods and/or Services at the Client's address (in the event that the Goods and/or Services are delivered by the Contractor or the Contractor's nominated carrier).
- 4.2 At the Contractor's sole discretion the costs of delivery are;
 - a) included in the Price, or
 - b) in addition to the Price, or
 - c) for the Client's account.
- 4.3 The Client shall make all arrangements necessary to take delivery of the Goods and/or Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods and/or Services as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods and/or Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 4.5 The Contractor may deliver the Goods and/or Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.6 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that;
 - a) such discrepancy in quantity shall not exceed 5%, and
 - b) the Price shall be adjusted pro rata to the discrepancy.
- 4.7 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.
- 4.8 The Contractor shall not be liable for any loss or damage whatever due to failure by the Contractor to deliver the Goods and/or Services (or any of them) promptly or at all.

5. Risk

- 5.1 If the Contractor retains ownership of the Goods and/or Services nonetheless, all risk for the Goods and/or Services passes to the Client on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and

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conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.

6. Title

- 6.1 It is the intention of the Contractor and agreed by the Client that ownership of the Goods and/or Services shall not pass until:
- the Client has paid all amounts owing for the particular Goods and/or Services, and
 - the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.
- 6.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Goods and/or Services shall continue.
- 6.3 It is further agreed that:
- until such time as ownership of the Goods shall pass from the Contractor to the Client the Contractor may give notice in writing to the Client to return the Goods or any of them to the Contractor. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - the Contractor shall have the right of stopping the Goods and/or Services in transit whether or not delivery has been made; and
 - the Client is only a bailee of the Goods and until such time as the Contractor has received payment in full for the Goods and/or Services then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Contractor; and
 - the Client shall not deal with the money of the Contractor in any way which may be adverse to the Contractor; and
 - the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Contractor; and
 - the Contractor can issue proceedings to recover the Price of the Goods and/or Services sold notwithstanding that ownership of the Goods and/or Services may not have passed to the Client.

7. Client's Disclaimer

- 7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Contractor and the Client acknowledges that the Goods and/or Services are bought relying solely upon the Client's skill and judgment.

8. Defects

- 8.1 The Client shall inspect the Goods and/or Services on delivery and shall within fourteen (14) days notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Goods and/or Services within a reasonable time following delivery if the Client believes the Goods and/or Services are defective in any way. If the Client shall fail to comply with these provisions the Goods and/or Services shall be presumed to be free from any defect or damage. For defective Goods and/or Services, which the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Goods and/or Services or repairing the Goods and/or Services.

9. Returns

- 9.1 Returns will only be accepted provided that:
- the Client has complied with the provisions of clause 8.1; and
 - the Contractor has agreed in writing to accept the return of the Goods; and
 - the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and
 - the Contractor will not be liable for Goods which have not been stored or used in a proper manner; and
 - the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 9.2 The Contractor may (in its discretion) accept the return of Goods and/or Services for credit or refund but this may incur a handling fee of 10% of the value of the returned Goods and/or Services plus any freight.

10. Warranty

- 10.1 Subject to the conditions of warranty set out in Clause 10.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within twelve (12) months of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) repair the defect or remedy the workmanship.
- 10.2 The conditions applicable to the warranty given by Clause 10.1 are:
- The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - Failure on the part of the Client to properly maintain any Goods and/or Services; or
 - Failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or
 - Any use of any Goods and/or Services otherwise than for any application specified on a quote or order form; or
 - The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - Fair wear and tear, any accident or act of God.
 - The warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.
 - In respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Client's claim.
- 10.3 For Goods not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Contractor shall not be bound by nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 10.4 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Contractor

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shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

11. Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980

- 11.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 11.2 Notwithstanding clause 11.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.
- 11.3 In particular where the Client buys Goods and/or Services as a consumer the provisions of Clauses 8, 9 and 10 above shall be subject to any laws or legislation governing the rights of consumers.

12. Intellectual Property

- 12.1 Where the Contractor has designed, drawn or written Goods and/or Services for the Client, then the copyright in those designs and drawings shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion.
- 12.2 The Client warrants that all designs or instructions to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order.

13. Default & Consequences of Default

- 13.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 13.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in pursuing the debt including legal costs on a solicitor and own client basis and the Contractor's collection agency costs.
- 13.3 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Contractor may suspend or terminate the supply of Goods and/or Services to the Client and any of its other obligations under the terms and conditions. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor exercised its rights under this clause.
- 13.4 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.5 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:
 - a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to meet its payments as they fall due; or
 - b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14. Security and Charge

- 14.1 Despite anything to the contrary contained herein or any other rights which the Contractor may have howsoever:
 - a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Contractor or the Contractor's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Contractor (or the Contractor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - b) should the Contractor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis.
 - c) The Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Contractor or the Contractor's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

15. Cancellation

- 15.1 The Contractor may cancel these terms and conditions or cancel delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price. The Contractor shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 In the event that the Client cancels delivery of Goods and/or Services the Client shall be liable for any loss incurred by the Contractor (including, but not limited to, any loss of profits) up to the time of cancellation.

16. Data Protection Act 1988 & Data Protection Act 2003

- 16.1 The Client and the Guarantor/s (if separate to the Client) authorises the Contractor to:
 - a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
 - b) to disclose information about the Client, whether collected by the Contractor from the Client directly or obtained by the Contractor from any other source, to any other credit provider or any credit reporting agency for the

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- purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Client on publicly accessible credit reporting databases.
- 16.2 Where the Client is an individual the authorities under (clause 16.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.
- 16.3 The Client shall have the right to request the Contractor for a copy of the information about the Client retained by the Contractor and the right to request the Contractor to correct any incorrect information about the Client held by the Contractor.

17. Clients Responsibilities

- 17.1 It is the Clients responsibility to;
- a) accept the recommended specifications of the Contractor; and
 - b) ensure there is adequate access at the delivery point to accept the Goods; and
 - c) make the installation site available on the agreed date and time. Should delivery be delayed or interrupted by the failure of the Client to adhere to the delivery schedule agreed to between The Contractor and the Client then any additional costs will be invoiced to the Client as an extra; and
 - d) have all areas clean and clear to enable scheduled work to be completed in accordance with the agreed schedule of installation. Delays to the installation caused by the Client, their employees or agents will result in chargeable downtime; and
 - e) provide adequate and safe access to the site for all workmen and equipment necessary for the installation. Delays in gaining access to, or from, the site will attract chargeable downtime; and
 - f) fully disclose any information that may effect the Contractor's installation procedures; and
 - g) ensure that adequate lighting for efficient installation is provided in the working area; and
 - h) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Client. All care is taken but no responsibility accepted by the Contractor in this regard; and
 - i) provide adequate dustsheets to protect the Client's goods and décor. The Contractor will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by the works; and
 - j) provide a suitable power supply to within three (3) metres of the installation site; and
 - k) provide suitable and adequate waste disposal facilities unless otherwise agreed with the Contractor.

18. General

- 18.1 Each clause of this contract is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.
- 18.3 The Contractor shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions.
- 18.4 In the event of any breach of this contract by the Contractor the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Contractor exceed the Price of the Goods and/or Services.
- 18.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Contractor.
- 18.6 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.7 The Contractor reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Client of such change. Except where the Contractor supplies further Goods and/or Services to the Client and the Client accepts such Goods and/or Services, the Client shall be under no obligation to accept such changes.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.