

EVANS FACILITY SERVICES LTD - CONDITIONS OF SUPPLY (DESIGN SERVICES)

1. DEFINITIONS: In these Conditions, the following expressions have the following meanings: **Agreement:** the agreement formed pursuant to clause 2 comprising the Proposal, these Conditions and any other documents expressly referred to in the Proposal; **Business Systems:** any structural, mechanical and electrical infrastructure and systems, IT and comms systems owned by, or licensed to, the Client; **Client:** the person to whom the Proposal is addressed; **Deliverables:** the products of the Services provided by EFSL to the Client; **Fees:** the fees set out in (or calculated in accordance with) the Proposal, as may be varied from time to time pursuant to clause 4.1; **EFSL** Evans Facility Services Limited (company number 16086777); **Proposal:** our fee proposal for the provision of mechanical and/or electrical design services; **Services:** the services detailed in the Proposal.

2. CONTRACT FORMATION: A contract for the supply of services by us to you on and subject to these Conditions is formed upon your written or verbal acceptance of our Proposal. Your standard terms and conditions (if any) are expressly excluded from the Agreement.

3. THE SERVICES: 3.1 In consideration of the payment by the Client of the Fees EFSL shall, with effect from the date set out in the Proposal, use its reasonable endeavours to: **(a)** provide the Services; and **(b)** supply the Deliverables. **3.2** EFSL shall use its reasonable endeavours to procure that the Services are performed: **(a)** using the degree of skill and care that would be expected from a reasonable mechanical and electrical designer; and **(b)** by adequately trained and skilled persons.

4. FEES AND PAYMENT: 4.1 The fees detailed in the Proposal have been calculated based on the assumptions and documents referred to in that Proposal. To the extent that such assumptions or the information in such documents change and/or if there are changes in the scope of the services required, or changes to the site, the Business Systems or changes in the designs, specifications, or in the programme for the Services (shortening or lengthening), EFSL shall be entitled to an increase in the fees payable to it. **4.2** EFSL shall submit invoices for the Fees in accordance with the Terms of Payment and payment in respect of such invoices shall be made in full and cleared funds within 7 days of the date of such invoices (or such other terms as are set out in the Proposal) with no set off or counter-claim. **4.3** The Fees are exclusive of tax. The Client shall, in addition, pay to EFSL the amount of any tax, duty or assessment, including any applicable VAT. **4.4** If the Client fails to make any payment due to EFSL under this Agreement by the due date for payment, then EFSL may, without liability to the Client, suspend the provision of the Services while the invoice(s) remain unpaid.

5. DELIVERABLES AND SYSTEMS USE: The Client shall ensure the Deliverables are used only for the purpose made known to the Client by EFSL and that any systems designed therein are operated, maintained and used properly and in accordance with any instructions provided by EFSL.

6. TERMINATION: 6.1 Notwithstanding anything else contained in this Agreement, EFSL may terminate this Agreement by giving written notice to the Client effective immediately if the Client fails to pay any sum by the due date for payment and the sum remains unpaid for a further five (5) working days following notice from EFSL. **6.2** Either party may terminate this Agreement by giving written notice to the other, effective immediately, if the other party commits a material breach of any provision of this Agreement and (in the case of a breach capable of being remedied) shall have failed to remedy such breach, within 30 days after the receipt of a request in writing from the other party to do so.

7. LIMITS ON LIABILITY: 7.1 EFSL warrants that the Services shall be provided in accordance with good industry practice and provided by appropriately trained and experienced personnel. Save for the foregoing, all other warranties and conditions whether express or implied by statute, law or otherwise are hereby excluded to the fullest extent. **7.2** Neither party excludes or limits liability to the other party for: **(a)** fraud or fraudulent misrepresentation; **(b)** death or personal injury caused by negligence; **(c)** a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or **(d)** any matter for which it would be unlawful for the parties to exclude liability. **7.3** EFSL shall not be liable to the Client, whether in contract, tort (including negligence) or otherwise for any: **(a)** loss of revenue; loss of actual or anticipated profits; loss of anticipated savings; **(b)** business interruption; loss of business; loss of opportunity; loss of goodwill; loss of reputation; loss of, damage to or corruption of data; or **(c)** any special, indirect or consequential loss or damages; in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or caused by breach of contract, tort (including negligence) breach of statutory duty or otherwise. **7.4** Subject to clause 7.2, EFSL's total aggregate liability in contract (including breach of warranty), tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance of this Agreement shall be capped at the lower of: **(a)** £250,000 or **(b)** 150% of the total amount of the Fees.

8. RELIEF EVENTS: Subject to clause 7.2, EFSL shall have no liability for any failure to perform or delay in performing the Services if it is prevented, hindered or delayed in doing so as a result of one of the following "Relief Events": **(a)** any failure by the Client to comply with its obligations under this Agreement in any material respect including any failure by the Client to provide any Client dependencies or any delay in providing them; **(b)** any material error or malfunction in the Business Systems or other equipment, hardware or systems for which EFSL is not responsible; or any failure by the Client, its agents or contractors to obtain sufficient support and maintenance for such Business Systems, equipment, hardware or systems, or any failure to adhere with any instructions or advice included within the Deliverables;

9. INTELLECTUAL PROPERTY RIGHTS: 9.1 All intellectual property rights in or relating to the Deliverables shall belong to, and will, always, remain vested in EFSL absolutely. **9.2** On receipt of payment in full and cleared funds by EFSL of the Fees and any value added tax thereon EFSL agrees to grant to the Client a non-exclusive, royalty-free, licence to use the Deliverables and the intellectual property rights therein or relating thereto solely for the purpose set out in the Proposal.