

## Commercial Premises - Terms and conditions

**The Client's attention is specifically drawn to clauses 14-16 – limitation of liability Definitions**

1. Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated below:

<b>Word or phrase</b>	<b>Meaning</b>
Agreement:	these Conditions, the Contractor's quotation and the Contractor's Order Acknowledgement
CDM Regulations:	the Construction (Design and Management) Regulations 2007, as they apply to the Contract Works.
Client:	the person or firm who purchases the Goods and/or Services from the Contractor.
Commencement Date	has the meaning given in clause 2.2.
Conditions:	clauses 1 to 32 of these Conditions.
Contract:	the contract between the Contractor and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
Contract Documents:	the Contractor's quotation and any documents referred to therein and in addition the Contractor's Order Acknowledgement.
Contract Price:	the price agreed by both parties for the Contractor to undertake the Contract Works confirmed in the Contractor's Order Acknowledgement.
Contract Works:	the System(s) works briefly described in the Contract Documents, as varied (where applicable) under clause 11.
Contractor:	Black Box Security Alarm Systems Ltd registered in England and Wales with company number 02481608 whose registered office is at 1A Chorley North Industrial Park, Drumhead Road, Chorley, Lancashire, PR6 7BX.
Data Protection Legislation	all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including without limitation, (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, (for so long as and to the extent that the law of the European Union has legal effect in the UK) (ii) the General Data Protection Regulation ((EU) 2016/679) and (iii) any other directly applicable European Union regulation relating to privacy
Equipment:	materials and goods supplied by the Contractor which will be permanently part of the System(s) as defined by the Contract Works
End User(s):	The ultimate consumer of the Equipment supplied and installed on the site.
Force Majeure:	has the meaning given to it in clause 28.
Order Acknowledgement:	acceptance by the Contractor in Writing of the Client's written order on the Contractor's Order Acknowledgement form.
Others:	any other Contractors, Sub-Contractors and Consultants working on the project whether employed by the Client, End User(s) or otherwise.
Services	means Maintenance of the Systems.

Site:	the place where the Equipment is to be delivered and / or installed.
Statutory Requirements:	any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Contract or performance of any obligations
System(s):	under this Contract and any regulation or by-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Contract Works or with whose systems they are, or are to be, connected.  the System(s) can comprise of Fire Detection and Alarms, and / or Intruder Alarm, and / or Access Control, and / or Closed Circuit Television (CCTV), and / or Disabled Refuge, and / or Disabled Toilet Alarms, and / or Public Address, and / or Public Address Voice Alarms, and / or Intercoms, and / or Gas Extinguishing, and / or Nurse Call, and / or Induction Loops, and / or Data Wiring / IT Infrastructure, and / or Gates, Barriers and Turnstiles, and / or Remote Monitoring, which can be an integrated or stand-alone System(s). The scope of these systems will be defined by the Contract Works within the Contract Documents.
Writing	includes hand, email, fax, post and courier unless otherwise stated

### **Basis of Contract**

- 2.1 The Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Contractor issues written Order Acknowledgment 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 the Contractor and any descriptions of Equipment, illustrations or descriptions of the Services contained in the Contractor's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall 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 Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Contractor shall not constitute an offer and is only valid for a period of 30 calendar days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.
- 2.7 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)
- 2.8 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.
- 2.9 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.

2.10(a) The Contractor 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 Customer 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

#### Reckoning periods of days

3. Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday, that day shall be excluded.

#### Third parties rights

4. (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.

#### Giving or service of notices and other documents

5.1 A notice or other document may be served in Writing by any effective means including by email, other than for those Notices stated in clause 5.5.

5.2 Valid email addresses to which notices or other documents can be sent are those notified by the parties to each other.

5.3 A notice or other document is deemed to be received on the next business day after it has been sent. A business day excludes Saturdays, Sundays and public holidays.

5.4 Documents attached to emails must be in Microsoft Word, Excel, Portable Document Format (PDF) or as specified in the Contractor's Order Acknowledgement. All drawings issued electronically (by email or otherwise) by the Client must be in either pdf, DWG or DWF formats. Documents or drawings attached to emails in any other format are deemed not to have been received.

5.5 Notices which must be sent by Recorded Signed For or Special Delivery are:

(a) Notice of termination per clause 20

For such a notice to be valid, it must be served in the specified manner. Failure to issue notices in the manner specified will be treated as if they had not been served.

#### Building Information Modelling (BIM)

6.1 Unless expressly stated in the Contract, any design, integration, re-formatting or use of BIM models or software is specifically excluded, whether issued by the Client or Others.

6.2 In the event that the Contractor is required by the Client or Others to utilise and / or design in any BIM format, the Contractor shall be entitled to recover all costs associated with complying with this request as if it was a variation to the Contract under clause 11. Costs may include (but not limited to) purchase of computer equipment; upgrade of existing computer equipment; purchase of relevant software including licensing and training; employment / hire of specialised staff / operators; increase in insurance premiums etc.

#### Contractor's obligations

7.1 The Contractor shall carry out and complete the Contract Works in accordance with the Contract Documents, with due diligence and in a good and workmanlike manner.

7.2 Where design of the works, whether in part or in whole, is an express requirement of the Contract, the Contractor shall use reasonable skill, care and diligence to complete the design of the System(s) including the selection of any specifications of Equipment.

7.3 Unless expressly stated in the Contract Documents, any design, whether in part or in whole, will not comply with 'Secured by Design' or any other similar scheme whether promoted by the Association of Chief Police Officers (ACPO) or otherwise. The contractor, at its sole discretion, reserves the right to use or follow any guidance, criteria, principal, standard or specification in any part of its design without achieving overall compliance with any recommendations or requirements of the scheme. For clarity, the Contractor is not a member of 'Secured by Design' scheme.

7.4 The Contractor shall not be responsible for verifying the adequacy of any design or information contained in any document or drawing supplied by the Client or Others to the Contractor as part of this Contract.

7.5 In the event that the Contractor identifies a divergence between the Statutory Requirements and the Contract through no error or omission on its part, the Contractor shall be entitled to recover any costs incurred in complying with the Statutory Requirements as a variation to the Contract under clause 11.

7.6 The Contractor shall provide Equipment for the System(s) of the standard stated in the Contract Documents.

7.7 The Contractor shall provide all labour, materials and plant required to carry out and complete the Contract Works during normal working hours except for the attendances set out in clause 28 of this Contract which the Client shall provide free of charge to the Contractor.

7.8 The Contractor shall only install Equipment supplied / purchased by them. No Equipment will be installed by the Contractor which has been issued by the Client or Others.

7.9 The Contractor may subcontract any of the Contract Works.

7.10 The Contractor shall comply with, and give all notices required by, any statute, any statutory instrument, rule or order or any regulation or bye-law applicable to the Contract Works (including the CDM Regulations). Any payable fees and charges in respect of the Contract Works shall be paid by the Client.

7.11 Unless expressly stated within the Contract Documents, the Contractor has no maintenance obligations under this Contract. Any defect discovered by the Client will be rectified in accordance with clause 13 of this Contract. In the event that maintenance is expressly stated to be provided by the Contractor within the Contract Documents over a specific term, please refer to clauses 29, 30, 31 and 32 of this Contract.

#### Client's obligations

8.1 The Client shall:

8.1.1 comply with the CDM Regulations;

8.1.2 provide sufficient access to the Site;

8.1.3 provide uninterrupted continuous working

for the Contractor to perform his obligations under this Contract and shall in no way hinder or prevent the Contractor, whether by act or omission, from performing such obligations.

8.2 The Client shall not, without the prior written consent of the Contractor, assign, transfer, charge, contract or deal in any other manner with all or any of its rights or obligations under this Contract.

8.3 The Client must provide the Contractor with all the information stipulated in the tender or quotation and any other information requested by the Contractor. If this information is not provided the Contractor may at its option, cancel the Contract or claim a suitable extension of the Contract period and charge the Client any additional costs resulting from such extension.

8.4 The Contractor does not accept responsibility for compliance with Statutory Regulations (including but not limited to planning permission, building regulations etc) or local by-laws or for the fulfilment of any special requirements binding upon the Client. When the Equipment is supplied and installed for use in conjunction with equipment and/or structures which are not supplied by the Contractor, the Client shall be solely responsible for ensuring that such equipment and/or structures are in all respects suitable and adequate for the purpose and are properly installed. The Contractor shall not be liable for any adaptation of the completed installation to suit the Client's own circumstances.

8.5 Where the Client requires special safety precautions when Contractors are working on site i.e. provision of temporary traffic control system, flagmen, warning lamps etc., such requirements shall be provided free of charge by the Client.

8.6 If installation is prevented, delayed, impeded or otherwise rendered more expensive by any act or omission of the Client (including but not limited to Others employed by the Client or any other third party to which the Client is responsible) including failure to advise the Contractor of special local conditions, the Client shall pay such extra charges as the Contractor shall reasonably require. Any alteration by the Client in design, quantities or specifications may also involve adjustment to the price. Such work shall be carried out only against written instructions given to the Contractor by the Client.

8.7 Where the Contractor provides any labour on the Client's Site, or on the Site of Others on behalf of the Client, the Client shall indemnify the Contractor against the consequences of any defect or suitability of any tackle or apparatus provided by the Client and against all liabilities for damages, costs and expenses arising out of the death of or personal injury to any persons or damage to any property howsoever caused provided that this indemnity shall not apply to liabilities arising from the negligence of the Contractor or its servants or agents.

### Commencement and completion

- 9.1 The Contractor shall commence the Contract Works on Site within 28 calendar days of receipt of the Client's written direction to commence the Contract Works
- 9.2 Any times, dates or durations for performance of the contract works stated in the Contract Documents are estimates only and, unless otherwise expressly stated, time is not of the essence. The Contractor will use reasonable endeavours to perform by the time, date or duration quoted, and except as stated in clause 15, will not be liable under any circumstances for any loss claimed to have arisen from any delay in delivery or performance. No delay shall entitle the Client to cancel or repudiate the Contract.
- 9.3 When installation of the System(s) has been completed, the Client will be notified accordingly and will be asked to provide a witness to attend the commissioning / testing of the System(s). The date of the commissioning / testing certification is the date when practical completion is deemed to have been achieved by the Contractor ("Contractor's Practical Completion") which will be issued to the Client in Writing. In the event that the Client does not provide such a witness the System(s) will nevertheless be commissioned and if found satisfactory by the Contractor will be deemed to have been handed over and a certificate to that effect will be issued and will be deemed to have been given to the Client. Installation is deemed to be complete if either the System(s) have been used by the Client or have been commissioned, notwithstanding minor omissions or defects which do not materially affect such use.
- 9.4 In the event that the Contractor is unable to fully commission the system(s) within the number of visits as defined by clause 9.5, through no fault, act or omission on its part, the Contractor will commission the System(s) as far as reasonably practical. The Contractor will notify the Client in Writing of the System(s), whether in whole or in part, that have not been commissioned.
- 9.5 Unless stated elsewhere in the Contract, the Contractor has included for two visits to site. Should additional visits to Site be required through no fault, act or omission of the Contractor, the Contractor shall be entitled to recover additional mobilisation costs in the amount of £500.00 + VAT per operative per each additional visit to the Site.

### Client's instructions

- 10.1 The Client may issue written instructions which the Contractor shall carry out within a reasonable period, taking into account the availability of materials, labour and other resources necessary to comply with the instruction. The Contractor shall only be obliged to follow Client instructions where the price has been agreed in accordance with clause 11.1 and which are issued between the date of the Contractor's Order Acknowledgement letter is served to the Client up until the date of Contractor's Practical Completion.
- 10.2 The Contractor shall be entitled to additional payment in respect of the Client's instructions.
- 10.3 If delivery of the Equipment is delayed due to any failure or default of the Client, the Contractor shall be entitled to arrange for storage of the Equipment on the Client's behalf and all charges for storage, transport, loading and unloading, insurance and demurrage will be payable by the Client. The due date for payment for such costs will be as stipulated in clause 17 of these Conditions.

### Variations and claims

- 11.1 Where the Client wishes to instruct a variation to the Contract Works, then the Client shall issue a request for a quotation, the Contractor shall price the additional works, and only when the price has been agreed, the Client shall issue a written instruction to the Contractor to proceed with the works and confirm the agreed price. The Contractor reserves the right to refuse to complete any additional works instructed by the Client until the price for the varied works has been agreed.
- 11.2 The Contractor shall in addition be paid any direct loss and/or expense incurred by the Contractor due to the regular progress of the Contract Works being affected by compliance with any Variation or for any other reasons beyond the control of the Contractor including but not limited to Force Majeure.
- 11.3 If the Client fails to provide any items of attendance, including but not limited to those included within clause 30 of these Conditions, the Contractor may in its discretion and at its sole option provide the items required and charge the cost incurred plus 20% to the Client.
- 11.4 The Contractor reserves the right to price any additional works using daywork rates. In the event that any additional works are priced using our standard rates at the prevailing time.

### Extension of time

- 12.1 If the Contractor is delayed in completing the Contract Works by the ordering of any Variation of the Contract Works or for other reasons beyond the control of the Contractor, the Contractor shall notify the Client in writing. The Client shall make such extension of time (if any) as is reasonable.

- 12.2 The Contractor shall constantly use reasonable endeavours to prevent or minimise any delay in the progress of the whole or any part of the Contract Works.

### Quality of Equipment

- 13.1 The Contractor warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), the Equipment shall:
- (a) conform with the Equipment specification as described in the Contract Works;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979; and
  - (d) be fit for any purpose held out by the Contractor.
- 13.2 The Contractor shall only be liable to make good any defects in the Contract Works which stem from his faulty selection of unsuitable or inadequate materials or from faulty materials or bad workmanship. If this is proved to be the case, then the Contractor undertakes, at its discretion, either to replace or repair the Equipment or any part or parts thereof. Provided that:
- (a) all monies due and payable have been paid in full;
  - (b) notification of the defect in Writing with full details thereof being received by the Contractor within 24 hours of the discovery of the defect. Such notice must be delivered in accordance with clause 5.5; and
  - (c) the Contractor is permitted to witness the defective Equipment in their original installed state; and
  - (d) the Contractor receives notification of any defect in Writing within 12 calendar months from the date of Contractor's Practical Completion per clause 9.3; and
  - (e) the System(s) have been used under proper operating conditions including having been operated within the classification and its known domestic and / or commercial use as applicable at the time the Contractor prepared its quotation; and
  - (f) in the case of Equipment supplied and fixed but not manufactured by the Contractor, the extent of the Contractor's liability in respect thereof shall not exceed the extent of the Contractor's or the manufacturer's liability to the Contractor; and
  - (g) the Contractor shall not be liable to make good any defects in the Contract Works which arise from the operation of the same by the Client, his servants or agents before the date of Contractor's Practical Completion per clause 9.3 nor shall the Contractor be liable for any loss or damage arising directly or indirectly as a consequence of such operation; and
  - (h) the Contractor is not liable if the defect is due to carelessness, improper treatment or any wilful or negligent act or omission, including lack of maintenance or any failure to comply with any instructions given by the Contractor or any use of the Equipment with any part or parts which do not comply with the Contractor's specifications
  - (i) the Contractor is not liable if the Equipment or System(s) have been modified by the Client, Others or End User(s).
  - (j) the Contractor is not liable if the defect or failure is caused by wear and tear
  - (k) the Contractor is not liable if the Client has not paid the Contractor for all work invoiced on this or any other contract between the Client and the Contractor.

- 13.3 The Contractor shall not be liable in respect of any defect which may occur in any system to which the Contract Works may be connected unless and to the extent that such defect is directly caused by a defect in the Contract Works for which the Contractor would be liable under this clause.

- 13.4 Save as is provided by this clause, the Contractor shall not be liable for any direct loss or damage as consequence of any defect in the Contract Works save to the extent that such defect is caused by the negligence of the Contractor, his servants or agents. Subject to clause 13.9, the Contractor's liability for any direct claim arising under the Contract shall be limited to that proportion of recoverable direct loss as would be just and equitable to require the Contractor to pay in regard to the extent of the Contractor's responsibility for the same on the assumption that:

13.4.1 All other consultants and advisors, contractors, subcontractors and suppliers directly or indirectly involved with the works under the Contract have provided contractual undertakings on terms no less onerous than those set out herein.

13.4.2 All the parties referred to in this clause have paid to the Client such sum as it would be just and equitable for them to pay having regard to the extent of their liability for the direct loss incurred by the Client.

- 13.5 The Contractor is not liable for damage to the Client's property or the property of Others during installation by the Contractor.

- 13.6 For the avoidance of doubt, any condition or warranty implied by law shall cease to apply after the expiry of the period stated in clause 13.2(d) above.

- 13.7 The Contractor will require a reasonable period of time to carry out any repairs or replacement

- 13.8 The Contractor shall be entitled to recover all costs incurred for any visits to Site caused either by the Client / End Users failure to properly maintain or operate the System(s) or where the Client fails to provide the services necessary on site for the Contractor to fulfil its obligations hereunder.
- 13.9 The Contractor shall be entitled to recover all costs incurred as a result of attending the Site to rectify a defect for which it is not liable for under the Contract, regardless of whether:
- 13.9.1 liability under the Contract was apparent at the time of notification;
  - 13.9.2 any works are undertaken by the Contractor;
  - 13.9.3 the defect was notified by the Client, End User or Others.

#### Limitation of liability

- 14.1 The Client shall indemnify and hold the Contractor and its offices, directors, employees and agents harmless against any claims, demands, liability, direct loss and/or damages including legal fees, arising from:
- (a) any misrepresentation and/or breach by the Client of the warranties contained in Clause 8; and/or
  - (b) without prejudice to the foregoing any breach by the Client of any of these Conditions.
- 14.2 Save as provided by clause 14.3 below, the Contractor's total liability in respect of all 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 £100,000 for a Contract whereby the Contract Price does not exceed £50,000; £250,000 for a Contract whereby the Contract Price does not exceed £100,000; and £500,000 for all other Contract whereby the Contract Price exceeds £100,000.
- 14.3 Nothing in these Conditions shall limit or exclude the Contractor's liability for: death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); any matter in respect of which it would be unlawful for the Contractor to exclude or restrict liability.
- 14.4 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.
- 14.5 Clauses 14 to 16 inclusive shall survive termination of the Contract.

#### Consequential loss or damage - The Client's attention is specifically drawn to this clause 15

15. The Contractor shall not be liable for any indirect or consequential loss or damage (including pure economic loss, damages, compensation, costs, expenses, losses or other liabilities of any nature, whether direct or consequential including, without limitation, any loss of profits, loss of goodwill, increased overheads or other financial loss of any nature suffered or incurred) arising under or in connection with the Contract howsoever caused, including but not limited to the Contractor's workmanship or Equipment supplied by the Contractor.

#### Limitation of liability for liquidated damages - The Client's attention is specifically drawn to clause 16

16. In the event that completion of the Contract Works is delayed solely by the Contractor, the Contractor's liability for liquidated damages is limited to 1% of the net price of the Contract Price each week or part thereof until completion of the work up to a maximum of 10% of the net price of the Contract Price which shall be the sole remedy for such delays.

#### Payment

- 17.1 Payment shall be due to the Contractor on production of an invoice in line with the terms stated in the Contract. This is a payee notice as defined by s110B(4) of the Housing Grants, Construction and Regeneration Act 1996 as amended.
- 17.2 Unless stated elsewhere in this Contract, the rates and prices are fixed for thirty calendar days from the date of the Contractor's quotation. After sixty calendar days, or such other period stated elsewhere in the Contract, the rates and prices will be altered by escalation as described below:
- 17.2.1 **Escalation.** No price increases resulting from escalation will be charged where the Contract Works are installed within 3 months from the date of the Contractor's quotation. Where the Contract Works are installed outside this 3 month period, then the rates and prices are subject to escalation. Such escalation will be calculated by the Contractor in accordance with RPI formula, with the base date being 30 calendar days after the date of the Contractor's quotation.
- 17.3 The Client shall determine and give a written notice to the Contractor not later than five calendar days after the date on which a payment becomes due which shall specify the amount (if any) of the payment to be made and the basis on which that amount was calculated. The final date for payment is 30 calendar days from the date the payment becomes due for all payments unless expressly stated elsewhere in the Contract.

- 17.4 Where payment is paid late by the Client, the Contractor may enforce its statutory rights. In addition, any costs incurred by the Contractor will be charged to the Client including but not limited to the costs of bounced cheques and time spent by the Contractor's employees.

- 17.5 All amounts quoted by the Contractor under the Contract or within variations are exclusive of value added tax ("VAT") and any duties which will be added to

the Contractor's invoice at the rate chargeable at the time of issuing the Contractor's invoice. The Client is responsible for notifying the Contractor of the correct VAT rate. Where no notification is given, VAT will be charged at the current highest prevailing rate. If the wrong rate is notified by the Client to the Contractor, this will constitute a breach of contract by the Client and the Client will indemnify the Contractor as set out in clause 14.8.

- 17.6 If the Client fails to make any payment due to the Contractor under the Contract by the due date for payment (**due date**), then the Client shall pay interest on the overdue amount at the rate of 8% per annum above the official dealing rate of the Bank of England (the base rate) from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

#### Retention of title

- 18.1 In no case will the property in the Equipment pass to the Client until payment has been made to the Contractor of all monies owed on any contract by the Client to the Contractor including VAT on and until such payment the Client will hold the Equipment in a fiduciary capacity as bailee for the Contractor.
- 18.2 The risk in the Equipment will pass to the Client once the Equipment has been permanently fixed on the Site and the Client shall then insure and keep insured the Equipment to the full price against all risks.
- 18.3 In the case of default in payment by the Client after delivery to site of the Equipment and before the Equipment has become the Client's property or if, before the property in the Equipment has passed to the Client, the Client becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof, the Contractor may give notice to the Client terminating the Contract or the Client's right to possession, as the case may be.
- 18.4 Where the Client has defaulted on payment, whether due to insolvency or due to any other reasons, the Client shall, if the Equipment has been despatched, be bound at the Client's own expense to re-deliver the Equipment to the Contractor. In such cases the Contractor may (with or without previous notice) repossess any or all of the Equipment and the Contractor or the Contractor's duly authorised Agents are in such circumstances irrevocably authorised by the Client to enter the premises in which the Equipment is located and to dismantle and remove the same at the Client's expense.

#### Cancellation

19. The Client has no right to cancel, but in the event of cancellation by the Client following written agreement by the Contractor, the Client will be liable to the Contractor to pay 25% of the Contract Price. The due date for payment of cancellation fees shall be the date of the invoice and the final date for payment shall be 30 calendar days after the date of invoice. Where the Contractor is unable to retrieve the Equipment, the 12 months warranty will cease to apply.

#### Suspension

- 20.1 If the Client fails to pay the sum due to the Contractor under this Contract or under any other contract with the Contractor by the final date for payment, then the Contractor may give a written notice of his intention to suspend the performance of any or all of its obligations under this Contract. If the Client's failure to make payment continues for three calendar days after the giving of such notice, then the Contractor may suspend such performance until payment in full is made under this Contract and under any other contract between the Client and the Contractor.
- 20.2 Where the Contractor exercises his right of suspension under clause 20.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right.
- 20.3 Applications in respect of any such costs and expenses shall be made to the Client and the Contractor shall with his application or on request submit such details of the costs and expenses as are reasonably necessary to enable his entitlement to be ascertained.

#### Termination – breach / insolvency / force majeure

- 21.1 Each party ("the terminating Party") shall be entitled by written notice to the other party to terminate the Contractor's employment under this Contract forthwith if the other party at any time



- (a) is in breach of his obligations under this Contract which he fails to rectify within seven calendar days of a written warning from the terminating Party specifying the breach and requiring that it be remedied within that period; or
  - (b) is insolvent within the meaning of s113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof
- 21.2 On termination of the Contract for the reasons stated above in clause 21.1:
- (a) the Contractor shall immediately leave the Site
  - (b) the Client shall immediately pay to the Contractor all of the Contractor's outstanding unpaid invoices and interest and, in respect of Contract Works or Equipment supplied but for which no invoice has yet been submitted, the Contractor shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - (c) the Client shall return all of the Contractor Equipment and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Contractor may enter the Client's premises or the premises of Others 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;
  - (d) 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
  - (e) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 21.3 If a Force Majeure Event prevents the Contractor from providing any part of the supply and installation of the Equipment for a period of 150 calendar days, the Contractor shall, without limiting any other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the other party.

#### Settlement of Disputes

- 22.1 If a dispute or difference arises under this Contract relating to a design, technical or specification matter which cannot be resolved by direct negotiations, the dispute will be referred to the National Security Inspectorate (NSI) for their opinion on the matter prior to any other action or method of dispute resolution being engaged by either party.
- 22.2 Following the opinion of the National Security Inspectorate (NSI), either party may refer the dispute to adjudication in accordance with the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 except that the adjudicator nominating body shall be The Royal Institute of Chartered Surveyors.
- 22.3 If a dispute or difference arises under this Contract which falls outside that as defined by 22.1, either Party may at any time refer the dispute to adjudication in accordance with the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 except that the adjudicator nominating body shall be The Royal Institute of Chartered Surveyors.

#### Copyright

- 23.1 Any drawings or other technical data provided in connection with the Contract shall remain in the custody of the Client, who shall not divulge any details therefrom to any other person, firm or company without the approval of the Contractor. Such drawings or other technical data remain the property of the Contractor or affiliated suppliers or manufacturers.
- 23.2 No right of ownership or interest in the Contractor's patents, registered designs, trademarks, copyrights or any other intellectual property owned by the Contractor shall pass in any way to the Client in relation to the Equipment or Services provided under these Conditions. The Contractor gives no warranties or representations in relation to the Contractor's patents, registered designs, trademarks, copyrights or any other intellectual property and, in particular, does not warrant or represent that any registered patents, registered designs, trademarks, copyrights or any intellectual property are valid or will remain registered.

#### Data Protection and Data processing

- 24.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 24 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 24, Applicable Laws means (for so long as and to the extent that they apply to the Contractor) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means any Data Protection Legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.
- 24.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Contractor is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

24.3 Without prejudice to the generality of clause 24.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Contractor for the duration and purposes of the Contract.

24.4 Without prejudice to the generality of clause 20.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under the Contract:

- (a) process that Personal Data only on the written instructions of the Customer unless the Contractor is required by Applicable Laws to otherwise process that Personal Data. Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (b) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Contractor complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 24.

24.5 The Customer does not consent to the Contractor appointing any third-party processor of Personal Data under the Contract.

24.6 Either party may, at any time on not less than 30 days' notice, revise this clause 24 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

#### Bribery Act 2010.

25. Either party will be entitled to terminate this contract immediately if the other party commits, or has committed, an offence under the Bribery Act 2010.

#### Insurance

26.1 The Client shall insure in the joint names of the Client and the Contractor the whole and every part of the Equipment and the Contractor's equipment including hired plant from the date the Equipment and/or the Contractor's equipment arrive on Site to Contractor Practical Completion or installation at full replacement value against all loss or damage from any cause whatsoever.

- 26.2 The Client shall indemnify the Contractor against all losses, liabilities, claims, costs or expenses arising from damage or injury to persons or property, which may arise out of or in conjunction with the execution of the Contract, provided that this indemnity shall not apply to liabilities arising from negligence of the Contractor or its servants or agents.
- 26.3 The Client agrees to indemnify the Contractor against all losses, damage, injury, costs and expenses of whatever nature suffered by the Contractor arising out of claims under the Consumer Protection Act 1987 and against all losses, damage, injury, costs and expenses of whatever nature suffered by the Contractor to the extent that the same are caused by or related to :-
- (a) drawings or specifications given to the Contractor by the Client in respect of Equipment supplied and / or manufactured by the Contractor or affiliated manufacturers for the Client, or
  - (b) defective materials or products supplied by the Client to the Contractor and incorporated by the Contractor in Equipment supplied and / or manufactured by the Contractor or affiliated manufacturers for the Client, or
  - (c) the improper incorporation, assembling, use, processing, storage or handling of Equipment by the Client.

**Confidentiality**

27. 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 27 shall survive termination of the Contract.

**Force Majeure**

28. The Contractor shall have no liability to the Client for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any act, event, omission or accident beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of a utility service, energy sources or transport network, acts of God, war, terrorism, riot, disorder, civil commotion, interference by civil or military authorities, compliance with any law or government order, rule, regulation or direction, accident, acts of local or central Government or national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, lightning, loss at sea, epidemics or similar events, natural disasters or severe weather conditions, or default of suppliers or subcontractors.

**Applicable law and Jurisdiction**

- 29.1 The parties irrevocably agree that the courts of England are to have exclusive jurisdiction for the purpose of hearing and determining any suit, action or proceedings and/or to settle any disputes arising out of or in any way relating to this Agreement or its formation or validity ("Proceedings") and for the purpose of enforcement of any judgment against its property or assets.
- 29.2 Nothing in this clause shall (or shall be construed so as to) limit the right of the Contractor to take Proceedings against the Client in the courts of any country in which the Client has assets or in any other court of competent jurisdiction nor shall the taking of Proceedings in any one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

Lockable secure storage for plant and materials which can be solely controlled and supervised by the Contractor	✓	X
Site Office and Accommodation for use by Black Box operatives	✓	X
Temporary Electricity Supply; 110 volt power	✓	X
Permanent Electricity Supply; 230 volt AC power (required for testing and commissioning)	✓	X
Telephone lines installed, commissioned and fully working	✓	X
Complete IT infrastructure including (but not limited to) data outlets, switches, IP addresses etc. all fully commissioned and working	✓	X
Unloading and distribution on site	X	✓
Shared toilets & mess room, shared first aid, shared drying room	✓	X
Electrical adaptors, leads etc	X	✓
Safety lighting	✓	X
Task lighting	X	✓
Scaffolding and powered access including but not limited to scissor lifts unless otherwise stated in the Contract	✓	X
Clear working area	✓	X
Rubbish skips (located at designated point on site)	✓	X
Plant, small tools and tackle	X	✓
The finished floor in and around the installation site with a tolerance across the diameter +/- 5mm	✓	X
Setting out including provision of all levels datums and gridlines	✓	X
Dealing with asbestos	✓	X
Protection of all surrounding equipment, floors, furnishings, external areas etc during installation	✓	X
Restriction of access to the site whilst the Contractor is installing the works to ensure safety to non-Contractor personnel. Note that this may include but is not limited to hoarding, heras fencing etc.	✓	X
Protection and responsibility of Black Box's works until Contractor's Practical Completion	✓	X
Protection and responsibility of Black Box's works after Contractor's Practical Completion	✓	X
Security	✓	X
Builders work	✓	X
Cleaning of Contract Works	✓	X
Final clean including removal of protective tape (where applicable)	✓	X

<b>30. Facilities, Services &amp; Attendances</b> - Unless shown below as being provided by the Contractor, all such items are to be provided by the Client at his cost.		
Item	Client to provide	Contractor to provide
Unimpeded and suitable vehicular access for Black Box to unload within 5m of the building or working area were practical.	✓	X
Suitable and secure parking for Black Box to leave vehicles.	✓	X

**Maintenance**

- 31.1 In the event that Maintenance of the Systems is expressly stated as included by the Contractor in the Contract Documents, the following conditions will apply in conjunction with clauses 1 to 30, in particular clauses 14 – 16 limitation of liability.

**Preventative Maintenance**

- 32.1 The Contractor will attend the Site the System(s) have been permanently installed to carry out Preventative Maintenance.
- 32.2 Preventative Maintenance means the routine inspection and testing of the System(s) to verify that they continue to function as intended and as

determined by the Contract Documents and / or the relevant Industry Standards and to identify any items found faulty, worn or in need of replacement.

- 32.3 Preventative Maintenance will be carried out to all System(s) as detailed within the Contract Documents in accordance with the relevant British / European Standards and / or Industry Standards in force at the time the maintenance is carried out by the Contractor or the standard applicable at the time of original commissioning.
- 32.4 The cost of the Preventative Maintenance carried out by the Contractor is included within the annual maintenance charge expressly stated in the Contract Documents which is paid annually in advance by the Client in accordance with clause 17 of these conditions.
- 32.5 The Contractor reserves the right to increase the annual maintenance charges at any time without notice to the client to include for increases in any third-party cost increase(s) which may be incurred by the Contractor over the maintenance / contract period.
- 32.6 In the event that the Contractor identifies that the System(s), either in part or in whole, require remedial works, including but not limited to: replacement of parts of the System(s) (including batteries); upgrading or re-programming of the System(s) software; additional works to the systems whether to address deficiencies in the initial installation (whether installed by the Contractor or otherwise) or to include additional Site requirements; all labour, plant and material costs incurred by the Contractor to carry out these remedial works shall be charged to the Client in addition to the annual maintenance charge stated in clause 32.2.
- 32.7 The Contractor shall carry out Preventative Maintenance during normal business hours which shall be classed as any week day which is not a public holiday between the hours of 9.00am to 5.00pm. Should the Client not be able to allow the Contractor to carry out Preventative Maintenance during normal business hours, the Contractor shall be entitled to recover all additional costs incurred.
- 32.8 Payment for remedial works carried out by the Contractor and / or carrying out Preventative Maintenance outside of normal business hours shall be in accordance with clause 16 of these conditions.

**Corrective Maintenance**

- 33.1 The Contractor will attend the Site the System(s) have been permanently installed in response to a request from the Client or Others to carry out Corrective Maintenance.
- 33.2 Corrective Maintenance means the investigation and repair of faults reported by the Client or Others including false alarms from the any of the System(s) listed to be maintained within the Contract Documents.
- 33.3 Corrective Maintenance will be carried out to all System(s) as detailed within the Contract Documents in accordance with the relevant British / European Standards and / or Industry Standards in force at the time the maintenance is carried out by the Contractor or the standard applicable at the time of original commissioning.
- 33.4 All costs incurred by the Contractor in responding to and / or carrying out Corrective Maintenance reported by the Client shall be charged to the Client in addition to the annual maintenance charge stated in clause 32.2.
- 33.5 All reports / notifications for Corrective Maintenance / additional works should be notified and carried out in accordance with clause 11 of these conditions.
- 33.6 In the event that a verbal instruction for Corrective Maintenance / additional works is given to the Contractor by the Client or Others, the Contractor shall carry out the works as if a formal written instruction had been issued by the Client in accordance with clause 11 of these conditions, with all costs incurred by the Contractor as a result of complying with this verbal instruction chargeable to the Client.
- 33.7 The Contractor shall carry out Corrective Maintenance during normal business hours which shall be classed as any week day which is not a public holiday between the hours of 9.00am to 5.00pm. Should the Client not be able to allow the Contractor to carry out Preventative Maintenance during normal business hours, the Contractor shall be entitled to recover all additional costs incurred.
- 33.8 Payment for Corrective Maintenance shall be in accordance with clause 16 of these conditions.

**Maintenance Term and Cancellation**

- 34.1 Unless expressly stated within the Contract Documents, the Maintenance Term shall be a fixed 3 year term from the date of commencement, which shall be the latter of either practical completion (as defined by clause 9) of the Contract Works or the date of contract acceptance in writing by the Client.

- 34.2 Upon expiry of the fixed 3 year term, the maintenance contract shall automatically renew for a further 12 months unless either party notifies the other in Writing of its intention to terminate the agreement at least 60 days before the end of the fixed term or any subsequent renewal period.
- 34.3 Each party has the right to terminate the contract in the event of the other's insolvency or default in accordance with clause 21.
- 34.4 In the event of cancellation by the Client following written agreement by the Contractor, the Client will be liable to the Contractor to pay the remaining term of the Maintenance Contract including any automatic renewal should notification not be provided in accordance with clause 34.2. The due date for payment of cancellation fees shall be the date of the invoice and the final date for payment shall be 30 calendar days after the date of invoice.