

Definitions. In these Conditions, the following definitions apply:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.7.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Deliverables:** the deliverables set out in the Order.

**Delivery Location:** has the meaning set out in clause 4.2.

**Force Majeure Event:** has the meaning given to it in clause 14.1.

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Post Survey Contract.

**Order Lead Time:** as set out in clause 7.3

**Post Survey Contract:** means a Contract entered into after a Survey is carried out and is considered the final Order Confirmation.

**Quotation:** the Supplier's quotation for the supply of Goods and/or Services

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification below.

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**Supplier:** ECOHAUS SOUTH WEST LIMITED registered in England and Wales with company number 07680700.

**Supplier Materials:** has the meaning set out in clause 8.1(g).

**Survey:** means either (i) a survey carried out by the Supplier or the agents of the Supplier at the location where it is proposed the Goods will be installed and/or Services provide, or (ii) Alternatively a virtual survey ("Virtual Survey") where the Supplier conducts a survey from a windows schedule, plans and or elevations, if instructed to do so by the Customer.

**Construction.** In these Conditions, the following rules apply:

a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

a reference to a party includes its personal representatives, successors or permitted assigns;

a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

a reference to **writing** or **written** includes faxes and e-mails.

#### **BASIS OF CONTRACT**

The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

The Order shall only be deemed to be accepted when a Post Survey Contract is signed by the Customer at which point and on which date the Contract shall come into existence (**Commencement Date**).

The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier, which is not set out in the Contract.

Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues, website or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

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.

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Any Quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue, and can only in any event be accepted if the Customer signs the relevant Post Survey Contact (as referred to in clause 2.2).

All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## **GOODS**

The Goods are described in the Goods Specification.

To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements, Any such amendments will be confirmed to the Customer in writing.

## **DELIVERY OF GOODS**

The Supplier shall ensure that:

each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the window/door position of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

The Supplier requires the Customer not to return any packaging materials to the Supplier..

The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. The Customer or its agents will be required to sign the Delivery note to confirm receipt of goods.

Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

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If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

If the Customer fails to accept or take delivery of the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready and jointly agreed, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

delivery of the Goods shall be deemed to have been completed at 9.00 am on the 5 Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and  
the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

The Customer shall not be entitled to reject the Goods if the Supplier delivers a short or partial shipment of Goods ordered.

#### **WARRANTIES AND QUALITY OF GOODS**

For Internorm Goods the Supplier as Internorm's only English 1<sup>st</sup> Window Partner has a support mechanism that guarantees the Customer that in the unlikely event that the Supplier cannot fulfil this contract then Internorm UK can "step in". Essentially Internorm UK is guaranteeing that Internorm content of the Customer's Order will be fulfilled in full. Further details of the obligations under the 1<sup>st</sup> Window Partner Terms & Conditions agreement the Supplier has with Internorm can be found as a schedule to these terms and conditions.

The Supplier guarantees the installation work carried out by the Supplier against any defective workmanship for a period of 10 years from the date of installation. The liability of the workmanship remains with the customer if the materials have not failed due to poor workmanship. In the event of any valid claim under the above guarantee, the Companies liability shall not exceed the contract price, and

- (i) removal and or repositioning of the Suppliers installed Goods by any persons other than the personnel of the Supplier will invalidate the warranty.
- (ii) The guarantee is transferable upon prior payment to the Supplier of their administration fee in force at that time (details of which are available from the Supplier upon request). To be transferable, full details of the new owner must be provided by the Supplier within 4 weeks of the date of the transfer of ownership and any monies owing to the Supplier must have been paid in full by the original Customer to enable such a transfer.

The Supplier procures a variety of Goods in the provision of its services, and the warranties from each manufacturer do vary. Copies of each specific Warranty are available upon request; and.

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Liability under any such warranty for the Goods shall depend on the terms of the individual warranties of the relevant manufacturer, however there shall no liability whatsoever of the Supplier in the event:

the Customer does not gives notice in writing during the relevant warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty;

the Supplier is not given a reasonable opportunity of examining such Goods; and

the Customer (if asked to do so by the Supplier) does returns such Goods to the Supplier's or Manufacturers place of business at the Customer's cost

the Customer makes any further use of such Goods after giving a notice of an alleged defect.

the defect arises because the Customer failed to follow the Supplier's or Manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;

the Customer alters or repairs such Goods without the written consent of the Supplier;

the defect arises as a result of, wilful damage, negligence, or abnormal working conditions and extreme weather.

the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

Where a number of systems are specified, please be aware that sightlines of glass and frames may vary especially where fixed panes are coupled to doors or sash units.

Paint finishes can vary slightly between different products especially metallic and pearlescent finishes. Anodized frames are subject to minor scratches and imperfections and must be deemed acceptable providing they are compliant with the manufacturers quality control guidelines.

Paint costs vary for different colours, dual colours and marine grade finishes. Please be aware that the price quoted is for the colour specified, if the Customer requests a colour change a surcharge may apply.

The Supplier cannot warrant that the installation of double or triple glazing will eliminate and/or prevent condensation moving internally or externally to the building fabric.

Under current legislation it may be necessary in certain circumstances to install safety glass. The Supplier will use at its discretion the inclusion of either laminated or toughened safety glass to comply with British Standard BS6262. Any changes required will be communicated to the Customer in writing.

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Due to the complexity of the glass manufacturing process certain imperfections and colour variation may occur. The Supplier accept no liability under warranty for any defects in the glass arising from these production imperfections, which meet the quality standards of the glass manufacturers.

No allowance has been made within the quotation for structural supports including lintels, brackets and beams. All assumed to be by the customer or main contractor or others unless otherwise specified

For HS330 Frames over 5.8m with natural timber internal finish, there will be a visible join line internally and externally the Aluminium will have a joining cover.

On instructions by the Supplier's surveyor, softwood timber sub-framing and uPVC trims will be used when deemed necessary. Softwood timber will be primed only.

All reasonable care will be taken by the Supplier to minimise damage to external render and internal paint finishes. The Supplier is not responsible for internal paint decoration and cannot guarantee a perfect colour and texture finish for external render.

No additional works will be completed or materials supplied other than those specified in the Order. The Customer hereby acknowledges and accepts the right for the Supplier to use equivalent sundry products to those set out in any specification current at the date of installation. The right is also reserved to vary installation methods from time to time according to circumstances. The Supplier will communicate any variations to the Customer or its agents in writing.

All Goods will be measured supplied and assembled in the way considered suitable by the Supplier. The Company reserves the right to make such modification to the original specification on behalf of the Customer as it may deem necessary and such modifications will be communicated to the Customer or its agents in writing.

#### **TITLE AND RISK**

The risk in the Goods shall pass to the Customer on completion of delivery.

Title to the Goods shall not pass to the Customer until:

the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall only pass at the time of full and final payment of all such sums

Until title to the Goods has passed to the Customer, the Customer shall:

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store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(l); and

give the Supplier such information relating to the Goods as the Supplier may require from time to time.

If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(l), then, without limiting any other right or remedy the Supplier may have:

the Customer's right to use them in the ordinary course of its business ceases immediately; and

the Supplier may at any time:

require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

#### **SUPPLY OF SERVICES**

The Supplier shall provide the Services to the Customer in accordance with the Post Survey Contract in all material respects.

Subject to clause 7.3, the Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Post Survey Contract but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

It is essential that all parties are aware of the order lead time/Order process and the critical importance attached to the final Post Survey Contract sign off. The Supplier will endeavour to expedite the Survey and jointly finalise with the customer/architect the final Post Survey Specification. It is in the interest of all parties to expedite this process to reduce the overall Order Lead Time. The Supplier cannot stress enough the significance of the customer signing off the Post Survey Contract and making the second deposit payment, before which the Suppliers are not permitted to place the Purchase Order on manufacturing. The Product Lead time starts from the date the Purchase Order is deemed live with manufacturing.

The Order Lead Time and Order process is summarized as follows:

A. "Pre-Survey Contract" Signed and 25% Deposit Paid is the lead-time start point.

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- B. The Supplier to firm up the Site Survey or Virtual Survey date.
- C. The Supplier to complete the Survey Report and issue final specification Post Survey Contract
- D. "Post-Survey Contract" signed and second deposit payment (25%) is received from Customer.
- E. Order is processed with manufacturing and delivery confirmation confirmed to the Customer.
- F. Installations Team will contact Customer to confirm the provisional installation date
- G. Installations Team will contact the customer and request final On Site Arrival 47.5% deposit prior to installation start date.
- H. 2.5% Permitted Retention payable on final snagging sign off.

**Total delivery time can range from 10-14 weeks depending on product type but a typical breakdown is as follows.**

Survey/Design – up to 3 weeks

Manufacturing lead-time – up to 9 weeks

Delivery from manufacturing – up to 2 weeks

AT & HT Entrance doors typically are a 14 week total leadtime.

\* A Virtual Survey is a survey process where the customer approves that the Supplier is to establish manufacturing sizes off architectural plans or window schedules.

The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event in writing.

The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

#### **CUSTOMER'S OBLIGATIONS**

The Customer shall:

ensure that the terms of the Order and (if submitted by the Customer) the Post Service Contract (including the specification for Goods set out therein) are complete and accurate;

co-operate with the Supplier in all matters relating to the Services;

provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services and for any survey;

provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

prepare the Customer's premises for the supply of the Services and any survey. If any visit by the Supplier is aborted due to preparation not being complete in part or in full, the Supplier reserves



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the right to charge for (i) subsequent revisits to site, (ii) surveyor £350/day, (iii) installation team £600/day plus mileage costs at £0.45/mile.

obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start. Including in that it is the responsibility of the Customer to obtain any necessary planning, listing building, conservation or other consent for the particular Goods and relevant Services requested by the Customer. The Customer shall notify the Supplier forthwith if the premises status changes to listed.. Furthermore the Customer shall hereby indemnify the Supplier against any loss, damage or cost suffered by reason of the Customer's failure to comply with this condition.

keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

Where the Supplier has quoted for installation into prepared openings, the Customer must ensure the openings are square, level and plumb.

It is critical for all timber frames delivered to site and/or installed, that the moisture/humidity content within the building must be controlled and monitored. No direct moisture must come into contact with the Timber frames and the moisture/humidity in the atmosphere must not exceed 50%. Humidity control and monitoring must continue during the completion of the building work and subsequent use of the building by the Customer.

The Supplier will provide ladders and basic tower scaffolding for normal access requirements for installation. If access or handling equipment is required due to the installation position or size/weight of the units being installed, this is the responsibility of the Customer or Main Contractor. No lifting, handling or access equipment has been allowed for within this contract unless otherwise specifically stated on the Post Survey Contract. The Supplier will remove all installation related waste from site by skip or installation team vehicles unless otherwise agreed with the Customer.

It is the responsibility of the Customer to ensure that no service supply or cables, whether telephone, electricity, television, gas, water or otherwise are present in the apertures to be filled at the time of installation. The Supplier accepts no responsibility for damage of such supplies whether visible or not, known or unknown at the time of installation. The Customer should note that the electricity boards and telecommunication services only deal directly with the owner of the premises.

Where manufacturing sizes are supplied by the Customer, those sizes will be taken as correct and any subsequent inaccuracies that result in the manufacture of an incorrect size will result in an additional charge levied against the Customer.

If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

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the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and

the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

#### **CHARGES AND PAYMENT**

The price for Goods shall be the price set out in the Post Survey Contract.

The price of the Goods is inclusive of all packaging, insurance and transport of the Goods.

The charges for Services shall be set out in the Post Survey Contract

The Supplier accepts no penalties or additional costs for errors from Surveys or any damage cause by the Supplier at the point of installation. The Supplier will endeavour and employ all efforts in its power to correct and or make good. Should this include the reordering of products, all endeavours will be made to reduce the lead-time where possible and fit/replace and the first possible opportunity.

The Post Survey Contract installation costs are based on a single continuous phase installation unless otherwise stated. Aborted visits to site arising from inadequate access, incorrect prepared openings will incur additional charges.

If delivery or installation is delayed by the Customer beyond the original agreed date by more than two weeks the Supplier reserves the right to charge for the product storage at £300 per month or part thereof.

If delivery or installation is delayed by the Customer beyond the original agreed date by more than two weeks the Supplier reserve the right to invoice the on site arrival 47.5% deposit payment to the Customer. The Customer shall make payment within 7 days of the on site arrival invoice date.

The Supplier requires to direct fix frames to the building fabric with fixings required for the head, jambs and cill sections. Any other fixing techniques or positions may be possible subject to confirmation with the Supplier but are outside the scope of works unless otherwise specified

Due to the bespoke nature of our products and the payment terms insisted by the Manufacturer's the payment terms for all goods and services is as follows (if not specified otherwise in the Post Survey Contract).

- i. 25% Deposit payable at point of Signed Pre-Survey Contract

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- ii. 25% payable on Post-Survey Specification sign off by the customer. This payment releases the order to the manufacturer.
- iii. 47.5% on Site Arrival payment prior to any installation and pro-rata in the event of staged or partial delivery.
- iii. 2.5% permitted retention ("Permitted Retention") payable on completion of works and snagging. Any minor paint repairs that require attention by the company Magic Man that is delayed by the customer does not qualify as Permitted Retention.

The Supplier shall carry out all the work as detailed on the Post Survey Contract for the agreed sum but reserves the right, by giving written notice to the customer at any time before completion, to increase the cost of the contract to cover any addition which is outside the control of the Supplier or which has been caused by the Customer not giving adequate information or reasonable access to site as requested. Prior approval will be required from the client before the Supplier engages in any additional works.

There may be are potential additional costs not included in the current Contract including but not limited to

Additional Site Survey Visits:	£350 (+ 0.45p per mile)
Internorm Internal Timber Trims:	£21-25 per meter depending on size/colour
External Colour match Trims:	£6-10 per meter depending on size/colour
Re-Visit to Install Cills (out of ecoHaus control):	£300 (+ 0.45p per mile)
Heavy Lifting Gear:	Price on Application

All Credit Card transactions are subject to 2.5% additional cost per transaction, exception is made for the initial 25% deposit payment. This is a cost levied by the credit card providers.

All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after any legal proceeding or judgement. The Customer shall pay the interest together with the overdue amount. Ecohaus reserve the right to employ the services of a debt collection agency to retrieve any outstanding monies.

The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or

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remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

#### **INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

All Supplier Materials are the exclusive property of the Supplier.

#### **CONFIDENTIALITY**

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, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

#### **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

Nothing in these Conditions shall limit or exclude the Supplier's liability for:

death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

fraud or fraudulent misrepresentation;

breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);  
or

defective products under the Consumer Protection Act 1987.

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Subject to clause 12.1:

the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and

the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £[sum equal to limit of cover set out in professional indemnity insurance policy].

The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

This clause 12 shall survive termination of the Contract.

#### **TERMINATION**

Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

the other party (being an individual) is the subject of a bankruptcy petition or order;

a creditor or encumbrance of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

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an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(a) to clause 13.1(h) (inclusive);

the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

On termination of the Contract for any reason:

the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

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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

clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### **FORCE MAJEURE**

For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors,

The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 16 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

#### **GENERAL**

##### **Assignment and other dealings.**

The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

##### **Notices.**

Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered

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by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

**Severance.**

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.

If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

**Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

**Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

**Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).



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## **SCHEDULE 1**

### **EXTRACT FROM 1<sup>ST</sup> WINDOW PARTNER AGREEMENT 2015**

#### **4.7 [1<sup>ST</sup>] WINDOW PARTNER OBLIGATIONS**

##### **SCHEME MEMBERSHIP.**

THE [1<sup>ST</sup>] WINDOW PARTNER IS AWARE THAT INTERNORM PROVIDES ASSURANCES TO CUSTOMERS LIKELY TO BE EQUALLY IF NOT MORE BENEFICIAL TO THE INTERESTS OF THE CUSTOMER.

**CUSTOMER CONTRACTS.** INTERNORM SHALL BE ENTITLED TO REQUEST A COPY OF ANY CUSTOMER CONTRACT AT ANY TIME. UPON REQUEST, THE [1<sup>ST</sup>] WINDOW PARTNER SHALL IMMEDIATELY PROVIDE INTERNORM WITH A TRUE AND COMPLETE COPY OF SUCH CUSTOMER CONTRACT.

THE [1<sup>ST</sup>] WINDOW PARTNER SHALL ENSURE THAT ALL CUSTOMER CONTRACTS CONTAIN A PROVISION ALLOWING THE [1<sup>ST</sup>] WINDOW PARTNER TO ASSIGN OR NOVATE THE CUSTOMER CONTRACT TO INTERNORM.

THE [1<sup>ST</sup>] WINDOW PARTNER SHALL NOT GIVE ANY THIRD PARTY (INCLUDING THE PROMOTERS OR OWNERS OF ANY THIRD PARTY CONCILIATION AND INSURANCE SCHEME) AN OPTION TO STEP-IN OR TO EXERCISE ANY RIGHT OVER ANY CUSTOMER CONTRACT, AND SHALL NOT ASSIGN OR NOVATE ANY CUSTOMER CONTRACT TO A THIRD PARTY, WITHOUT THE PRIOR WRITTEN CONSENT OF INTERNORM.

IN THE EVENT THAT INTERNORM HAS REASON TO BELIEVE THAT THE [1<sup>ST</sup>] WINDOW PARTNER IS UNABLE PROPERLY TO FULFIL ITS OBLIGATIONS UNDER A CUSTOMER CONTRACT, INTERNORM SHALL BE ENTITLED TO:

step in and take such steps as are intended to ensure the due performance of the relevant Customer Contract. In the event that Internorm wishes to exercise this right, Internorm shall serve a notice on the [1<sup>st</sup>] window partner, confirming that it wishes to step into the Customer Contract. From the date of service of this notice, the Customer Contract shall continue in full force and effect with the [1<sup>st</sup>] window partner being deemed to have appointed Internorm as the [1<sup>st</sup>] window partner's sub-contractor in its

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execution of the Customer Contract with sole and exclusive (to the exclusion of the [1<sup>st</sup>] window partner) authority to collect any further payments due from the relevant Customer which relate to Products and related services yet to be supplied to the Customer. Where step in occurs the [1<sup>st</sup>] window partner shall be deemed to have agreed that (in consideration of Internorm undertaking the execution of the relevant Customer Contract) the [1<sup>st</sup>] window partner shall pay to Internorm an amount equivalent to the remaining balance due to Internorm under the relevant Customer Contract together with any third party installation costs met by Internorm with Internorm being entitled to apply monies receivable from the Customer towards such payment by way of set-off; or

require that the [1<sup>st</sup>] window partner's rights and obligations under the Customer Contract be immediately novated or assigned to Internorm by giving written notice to the Distributor.

INTERNORM'S ELECTION OF THE STEP-IN RIGHT OPTION PURSUANT TO CLAUSE (A) SHALL BE WITHOUT PREJUDICE TO ITS RIGHT TO SUBSEQUENTLY REQUIRE A NOVATION OR ASSIGNMENT OF THE CUSTOMER CONTRACT IN ACCORDANCE WITH CLAUSE (B) SHOULD INTERNORM DEEM THIS APPROPRIATE.

THE [1<sup>ST</sup>] WINDOW PARTNER SHALL ENSURE THAT THERE ARE PROVISIONS IN EACH CUSTOMER CONTRACT WHICH ENTITLE THE CUSTOMER TO TERMINATE THE CUSTOMER CONTRACT IN THE EVENT THAT THE [1<sup>ST</sup>] WINDOW PARTNER IS UNABLE OR UNWILLING TO FULFIL ITS OBLIGATIONS UNDER THE CUSTOMER CONTRACT, AND THE [1<sup>ST</sup>] WINDOW PARTNER SHALL ACCEPT AND COMPLY WITH ANY SUCH TERMINATION THAT IS INITIATED BY THE CUSTOMER. SUCH TERMINATION SHALL BE WITHOUT PREJUDICE TO ANY MONIES OWING IN RELATION TO ANY PRODUCTS ALREADY SUPPLIED BY THE [1<sup>ST</sup>] WINDOW PARTNER OR ANY OTHER MONIES ALREADY DUE AND OWING UNDER THAT CUSTOMER CONTRACT WHICH HAVE NOT ALREADY BEEN PAID INTERNORM SHALL RECEIVE ANY SUCH MONIES OUTSTANDING AND PAYABLE BY THE CUSTOMER AS AGENT FOR THE [1<sup>ST</sup>] WINDOW PARTNER INTERNORM'S DUTY TO PAY OVER BEING SUBJECT TO ANY RIGHT OF SET OFF THAT INTERNORM MAY HAVE IN RESPECT OF MONIES OWED BY THE [1<sup>ST</sup>] WINDOW PARTNER TO INTERNORM WITH INTERNORM BEING ENTITLED TO APPLY MONIES RECEIVED AGAINST ANY SUCH OUTSTANDING LIABILITY OF THE [1<sup>ST</sup>] WINDOW PARTNER.

THE [1<sup>ST</sup>] WINDOW PARTNER SHALL COMPLY WITH ANY DIRECTION WHICH INTERNORM, ACTING REASONABLY AND IN ACCORDANCE WITH THE PROVISIONS OF SUB-CLAUSES 0 AND 0 OF THESE TERMS AND CONDITIONS, GIVES TO TERMINATE ANY RELEVANT CUSTOMER CONTRACT.