

## QEMS0002 ENHANCED CONTROL SYSTEMS LTD TERMS AND CONDITIONS OF BUSINESS

### 1. **Definitions**

In these Conditions the following expressions shall have the following meanings:-

“ECS” means Enhanced Control Systems Ltd, “Equipment” means all plant, equipment, accessories and spares manufactured or supplied by ECS under this contract, “Tender” means any offer to sell Equipment made by ECS, “Purchaser” means the person, company or firm entering into this contract with ECS for the purchase of Equipment and services.

### 2. **Acceptance of Conditions.**

These are the only conditions on which ECS deals. Acceptance of a Tender creates a contract between ECS and the Purchaser subject to these conditions, which may only be varied in writing having been signed by an authorised person on behalf of ECS.

### 3. **Validity**

Unless previously withdrawn, or otherwise specified, a Tender shall be open for acceptance in writing within thirty days after date of issue and is subject to written confirmation by ECS at the time of such acceptance.

### 4. **Acceptance of Tender**

The acceptance of a Tender must be accompanied by full and final information to permit manufacture to proceed without interruption and enable ECS to deal with the order forthwith. Otherwise ECS shall be at liberty to amend the Tender prices to cover any increase in cost which has taken place after acceptance, and extend if necessary the quoted delivery time. A contract shall include only such Equipment and services as specified within the Tender document.

### 5. **Data**

All performance figures, descriptive and forwarding specifications, drawings and particulars of weight and dimensions submitted with a Tender are approximate only and the descriptions and illustrations contained in ECS catalogues, price lists and other advertisement matter are intended merely to present a general idea of the Equipment described therein and shall not form part of any Tender. After acceptance of a Tender, one set of outline drawings will be supplied free of charge by ECS if so requested.

### 6. **Tests**

All Equipment supplied by ECS is submitted to ECS standard inspection and tests at the manufacturers works prior to dispatch. If special tests or tests in the presence of the Purchaser or his representative are required they must be made at the manufacturers works unless otherwise stated in the Tender. Any costs associated with the testing will be borne by the Purchaser unless otherwise stated in the Tender. If there is any delay in attending the tests after ECS has given seven days notice that the Equipment is ready for testing, the tests will proceed in the Purchaser's absence and shall be deemed to have been made in his presence. ECS bona fide Certificate of Test shall be accepted by the Purchaser as evidence of the performance achieved on testing. If the Certificate of Test shows that the performance achieved complies with the performance figure stated in ECS specification, the Equipment shall be deemed to comply in all respects with the Tender and the expense of any subsequent tests will be borne by the Purchaser.

### 7. **Dispatch**

Any time or times quoted for dispatch or delivery are approximate only. ECS will use its best efforts to adhere to the dates given but cannot accept any liability whatsoever for failure to do so.

### 8. **Installation**

When installation is included in a Tender only skilled supervision during normal working hours is covered unless otherwise stated. After installation and starting up the Equipment any further attendance required by

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the Purchaser, or necessary because the Purchaser is not ready to have the Equipment put into service, will be charged for at ECS stated rates.

### 9. **Payment**

Subject to credit approval and unless otherwise stated in the Tender, the Tender price, inclusive of value added tax will be payable in full when the Purchaser is notified that the Equipment has been tested and is ready for dispatch. Installation charges will be payable upon completion of installation or three months after payment for the Equipment becomes due, whichever is the earlier. Interest at the rate of 5% above the prevailing Barclays Bank Plc base rate will be charged on accounts unpaid within thirty days of invoice date unless otherwise agreed in writing.

### 10. **Price Adjustment**

If between the date of a Tender issued by ECS or the date of receipt of the order (whichever is the earlier), and the date when the Equipment is ready for dispatch to the Purchaser or (when the contract includes installation) the date of completion of installation, there is any increase in the cost to ECS, of materials, labour or any other expenses arising in connection with the Tender, or if any extra cost is incurred owing to the variation, suspension or cancellation of work by the Purchaser's instructions, lack of instruction or to interruptions, delays, overtime, unusual hours, mistakes or work for which ECS is not responsible, then in any such cases ECS shall be entitled to charge, in addition to the Tender price or prices, a sum equal to such extra costs plus an allowance for overhead and profit. All Bank charges associated with payment for Equipment shall be debited to the Purchaser's account.

### 11. **Acceptance**

Equipment shall be deemed to have been accepted by Purchaser from the date of delivery or if ECS installs and/or commissions the Equipment, the acceptance date shall be the date on which installation or site tests are concluded to the reasonable satisfaction of the Purchaser. Risk in the Equipment passes on delivery. If there is any delay in acceptance for any reason for which ECS is not responsible the Equipment shall be deemed to have been accepted seven days after ECS has notified the Purchaser in writing that the Equipment is ready for delivery, installation, or site tests, as applicable.

### 12. **Ownership**

Notwithstanding acceptance and the granting of credit:-

- (i) the Equipment remains the absolute property of ECS until payment has been received in full. The Purchaser shall hold the Equipment in a fiduciary capacity and shall not be entitled to install the Equipment (if installation is not undertaken by ECS) and to operate the Equipment in the normal course of business until the ownership of the Equipment passes to the Purchaser
- ii) The Purchaser agrees to store the Equipment until it has been paid for or installed in such a way that it is readily identifiable as the property of ECS.
- (iii) until payment is received in full, and without prejudice to any other remedies, ECS or its agents shall be entitled immediately after giving notice of its intention do so, enter the premises of the Purchaser and repossess any Equipment to which it has title under these terms and conditions of sale.

### 13. **Default by Purchaser**

If Purchaser defaults or commits a breach of any contract or of any other of his obligations to ECS, or if any distress or execution shall be levied upon the Purchaser's property or assets, or if the Purchaser shall make or offer to make any arrangement or composition with his creditors, or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against him, or if Purchaser being a limited

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company, a resolution or petition to wind up such company's business, (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of such company's undertaking property or assets or any part thereof shall be appointed, ECS shall have the right forthwith to suspend or terminate performance of any part of this contract and either by an agent or itself have access to the Purchaser's premises for the protection, removal, and disposal of any Equipment at any time in which property has not passed from ECS to the Purchaser.

### **14. Storage**

If ECS does not receive forwarding instructions within fourteen days of notification to the Purchaser that the Equipment is available for dispatch, risk will immediately pass to Purchaser and all risks insurance and storage charges will be payable by the Purchaser to ECS.

### **16. Intellectual Property**

- (i) In the event of any claim being made or legal proceedings being brought against ECS in respect of infringement of patents the Purchaser shall notify ECS immediately. ECS may, with the Purchaser's assistance if required, but at ECS expense, conduct all negotiations for the settlement of such claim or litigation. ECS will indemnify the Purchaser in respect of any such claims or litigation subject to such notification, provided that such Equipment has not been used for any purpose other than that for which it was supplied.
- (ii) The Purchaser shall indemnify ECS for any costs, charges, damages and expenses incurred by ECS as a result of any action, claim or demand brought against ECS as a result of ECS compliance with or use of the Purchaser's designs, specifications, drawings or data.

### **17. Arbitration and Law**

If at any time any dispute or claim arises between ECS and the Purchaser in connection with any dealings, either party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to arbitration in the United Kingdom by an arbitrator mutually agreed upon or, failing agreement, to an arbitrator appointed by the President for the time being of the Institute of Mechanical Engineers or the Institute of Electrical Engineers. Such submission shall be deemed to be submission to arbitration Acts, 1950 to 1979 or any statutory re-enactment or modification thereof, for the time being in force.

English Law shall apply to these conditions and dealing under them.

### **18. General Liability**

ECS Liability in respect of any contract shall be as specified in these Conditions and shall be limited accordingly. ECS shall not be liable under any circumstances for any consequential loss or damage howsoever caused. ECS shall be relieved of all liability to the extent to which fulfilment of its obligations are prevented, frustrated or impeded by circumstances beyond ECS control.

### **19. Unforeseen Events**

Considering the current global pandemic situation caused by the **Covid-19** virus, and consequent uncertainty and unpredictability, this Offer is conditioned to the resumption of trade to a normal way (national and international), once the situation is overcome. Consequently, all deadlines and other conditions included in this Offer may be revised by ECS if the circumstances on which it is based are changed due to the pandemic.

### **20. Insurance**

ECS have adequate levels of insurance to cover normal levels of business; copies of the Policies are available on request. Excess levels of insurance can be provided on a contract basis at additional cost if required.

### **21. Collateral Warranties and Bonds**

The provision of Collateral Warranties and Bonds are excluded from our Tender and will be considered on merit at the time of acceptance of our quotation.

### **22. Liquidated & Ascertained Damages and Retention**



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LAD's and Retention are subject to agreement at the time of acceptance of our quotation but, notwithstanding, Retention is only applicable to the Installation and Commissioning sections of our Price Schedule at 3%.

*(February 2021)*