

**Active EMS Ltd (Company Number 13454789)
Unit A5/A6, Chamberhall Business Park, Harvard Road, Bury, BL9 0FU**

SALES CONTRACT

1. INTERPRETATION

- 1.1 "Active EMS" shall mean Active EMS Ltd (Company Number 13454789) and any trading division named overleaf and the words "we", "us" and "our" shall have the same meaning.
- 1.2 "Goods" or "Services" shall mean the goods and/or services which we agree to supply by this contract.
- 1.3 "Specification" shall mean, except where the context otherwise requires, the specification of the goods and services to be supplied by us and shall include any description and quantity specified.
- 1.4 "Blanket Contract" shall have the meaning given in clause 4 of this contract.
- 1.5 The singular shall include the plural and the plural shall include the singular.

2. GENERAL

- 2.1 These are the general conditions on which Active EMS agree to supply Goods or Services.
- 2.2 We will only agree to supply Goods or Services on other conditions if one of Active EMS's Directors or the Company Secretary signs such contract.
- 2.3 However, the terms in clause 4.2 (length of forecasts under blanket contracts), clause 5 (price and payment) and clause 9.2 (limit of liability) of these conditions may be varied without the need for the signature of a Director of Active EMS or of the Company Secretary. Any representations incorporated as special conditions in this contract under clause 2.6 may also be made without the signature of a Director of Active EMS or the Company Secretary.
- 2.4 Save as above, nobody acting on our behalf has authority to agree to supply Goods or Services except on these conditions.
- 2.5 Nobody acting on our behalf has authority to enter any collateral contract which may affect the operation of these conditions or your duties under this contract.
- 2.6 If any representations are made to you on our behalf on which you wish to rely, these representations should be recorded as special conditions of this contract.
- 2.7 No one acting on our behalf has authority to make any representation not recorded as a special condition.
- 2.8 You agree that you have not relied on any representation not recorded as such a special condition.
- 2.9 You also agree to waive any claim, whether for damages or rescission or for any other relief, in respect of any representation not so recorded.
- 2.10 No document whether produced by us or not (including all catalogues, brochures, price lists, newsletters, advertisements or drawings) shall form part of this contract, unless reference is made to each such document in the special conditions of this contract.

3 QUOTATIONS AND ORDERS

- 3.1 Unless stated otherwise, any quotation given by us is valid as an offer to supply Goods or Services for a period of 1 calendar month. At any time during that period, we reserve the right to withdraw or amend the quotation.
- 3.2 If we accept any order of yours, our acceptance is subject to these general conditions to the exclusion of any other terms and conditions which you may seek to incorporate.

4. BLANKET CONTRACT

4.1 If this is a Blanket Contract, we agree to supply Goods or Services to you at the price and in the manner agreed by this contract: either

4.1.1 for the period fixed by this contract; or if no period is fixed,

4.1.2 for an indefinite period terminable by either side on three months notice.

4.2 You must provide us with a forecast of your demand for Goods or Services subject of this Blanket Contract, either:

4.2.1 as provided by the specific terms of this contract; or, in default of any such specific terms

4.2.2 by way of a rolling forecast forecasting such demand for at least the next quarter year.

Unless otherwise stated on the forecast, the first monthly requirement set out on each such forecast shall be a firm order for the stated quantity of Goods or Services.

4.3 You will notify us as soon as possible of any changes in the forecast.

4.4 If you change a forecast or change a firm order under a Blanket Contract, then we shall take reasonable steps to mitigate any loss which we might suffer.

4.5 If you change a firm order under a Blanket Contract, you shall (subject to our duty to mitigate) pay us all costs and losses (including loss of profit) suffered by us in consequence thereof.

4.6 If a change in a forecast results:

4.6.1 in our purchasing materials which cannot be used in the ordinary course of our business, or

4.6.2 in our employees lacking work to do, or

4.6.3 in part or all of our premises, factories workshops or production lines standing idle, you agree (subject to our duty to mitigate) to pay us the costs or losses (but not loss of profit) reasonably attributable thereto.

4.7 We shall use reasonable efforts to meet orders for Goods and Services pursuant to your forecasts. If, despite reasonable efforts, we will not be able to meet your forecasts, we will have the option to decline any order placed by you under the Blanket Contract.

4.8 Under a Blanket Contract, you will order Goods or services, which we shall then deliver in accordance with your order.

4.9 The consideration for the Blanket Contract is your making of the first order under the Blanket Contract.

4.10 Unless otherwise agreed, we reserve the right to vary prices to take into account changes in our labour and overhead rates.

5. PRICE AND PAYMENT

5.1 The price shall be that agreed.

5.2 Unless otherwise agreed, the price shall:

5.2.1 be exclusive of Value Added Tax; but

5.2.2 include all other import and other duties; and

5.2.3 exclude delivery and packing.

5.3 Payment is due by you 30 days from the date of invoice. Unless otherwise agreed, payment shall be made in Pounds Sterling.

5.4 If payment is not received by the due date, we shall be entitled to charge interest at a rate of 5% per annum above Barclays Bank PLC's base rate from time to time accruing daily from the date payment was due until the date payment is actually received. We shall also be entitled to levy an administration charge in respect of all our efforts to obtain payment.

5.5 If any invoices for Goods or Services provided by us are due but unpaid, we shall (in addition to our other rights under this contract) be entitled to withhold all supplies of Goods or Services that may be outstanding. In addition, we may (at our option) treat you as being in repudiatory breach of this contract.

5.6 If we supply Goods or Services in instalments or pursuant to a Blanket Contract, we shall, unless otherwise agreed, be entitled to tender separate invoices in respect of each delivery thereof.

5.7 You shall have no right of set off, counterclaim, discount, credits or rebates against invoices submitted.

6. PRICE VARIATIONS

In the event:

- 6.1 that there is any variation of the Specification which incurs additional work or materials;
- 6.2 that additional works or replacement materials are required by reason of any defect or modification of the Specification;
- 6.3 that the price of materials or other components required to supply the Goods or Services have increased;
- 6.4 that taxes, duties or other levies have increased the cost of the Goods or Services we agree to supply;
- 6.5 that any currency fluctuations have increased the cost of the Goods or Services we agree to supply; we may, at our option, increase the price by such amount as may be reasonably attributable to such event or events.

7 SPECIFICATION

- 7.1 We undertake that the Goods or Services supplied conform with the Specification.
- 7.2 However, unless specific tolerances and permitted shortages are specified in the specification, we shall be permitted to supply goods and services with such tolerances and shortages as may be reasonable in all the circumstances. Also, in respect of any materials or components supplied by you, we shall be entitled to reasonable wastage in respect of such materials and components.
- 7.3 We may unless the contrary is expressly stated in the Specification substitute any materials with others of a similar standard.
- 7.4 We warrant that all Goods sold are of satisfactory quality within the meaning of the Sale of Goods Act 1979 as amended and that all Services provided by us will be carried out with reasonable care and skill.
- 7.5 However, we shall be under no liability under this warranty in respect of any defect in the Goods or Services arising from any drawing design or specification supplied by you or any defect in goods or materials supplied by you.
- 7.6 You are responsible for the Specification which, without prejudice to the generality of the forgoing, shall include suitability for purpose, designs, drawings, technical data, its accuracy and for ensuring that it does not infringe any patents, design rights, copyrights or other intellectual property rights.
- 7.7 If you are supplying any materials or components:
 - 7.7.1 for incorporation into Goods; or
 - 7.7.2 which are ancillary to the provision of the Services; or
 - 7.7.3 where any such materials or components are being procured from your nominated supplier whether on a free issue basis or otherwise, then you must also accept responsibility for the Specification, suitability and quality of all such materials and components.
- 7.8 You shall reimburse us with a sum equal to the cost of procuring materials or components required to supply during the period covered by the forecast whether or not those materials or components were acquired from your nominated supplier or otherwise should you inform us that those materials or components no longer be used for incorporation into Goods or ancillary to the provision of Services.
- 7.9 You are also responsible for ensuring that the Specification complies with all relevant laws and regulations, including legislative provisions of the European Union.
- 7.10 We shall accept responsibility for that part of the Specification we provide (if any).
- 7.11 We shall afford you an opportunity to inspect our production facilities subject to prior appointment. You agree not to use any information acquired by you in the course of such inspection save bona fide in connection with the supply of Goods or Services by us to you.

8. DELIVERY AND INSPECTION

- 8.1 The timely delivery of any materials or components being supplied either by you or your nominated supplier shall be your responsibility.
- 8.2 We will use our reasonable endeavours to deliver Goods or Services to the place agreed and at the time agreed unless it has been agreed that you will be responsible for collection of Goods in which case they may be collected from the agreed point of collection. Save as aforesaid, time shall not be of the essence in respect of any delivery of Goods by us or supply of Services by us.
- 8.3 You shall endeavour to inspect the Goods or Services as soon as reasonably possible after delivery.

8.4 You agree to give us a reasonable opportunity to inspect any Goods supplied under this contract in respect of which you claim any defect or shortage. You also agree to give us a reasonable opportunity to inspect all evidence (whether physical, documentary or of any other nature) showing any defect in any Services supplied under this contract. We shall be given reasonable opportunity to carry out all tests and take all such copies, photographs and samples as we may reasonably require.

8.5 You agree to notify us in writing within 14 days of all claims in respect of defects in or shortages of any Goods or Services supplied under this contract where such defects or shortages were or would have been reasonably apparent on inspection. You agree to waive all claims for damages or other relief in respect of any such defects or shortages not notified to us in writing within 14 days.

8.6 We cannot accept any liability if Goods or Services have been altered, modified or have deteriorated whilst in your possession. Neither can we accept liability for Goods which have been subject to abnormal use, misuse or neglect.

8.7 Subject to the above, we shall make good all defects or shortages at our cost.

8.8 If we request it, all packaging or packing materials must be returned to us or our nominated agent.

8.9 If you are collecting Goods, you are responsible for loading the same at the point of delivery.

8.10 Where you are collecting Goods, for health and safety reasons, our employees are not obliged to assist in the loading of Goods.

8.11 Where we agree to deliver Goods by instalments, a failure to make any particular delivery on time or at all shall not be a repudiatory breach of the whole contract.

9. OUR LIABILITIES

9.1 Nothing in this clause restricts our liability for death or personal injury resulting from our negligence or the negligence of our employee's servants or agents.

9.2 (Apart from our liability under clause 9.1) our liability to you for any claim or claims made by you shall not exceed ten times the amount of the invoice or invoices from us to you in respect of the particular Goods or Services the subject of your claim or claims, or £100,000 (whichever is the smaller). However if the amount of our invoice or invoices to you is less than £250, our liability shall be limited to £2,500 instead of ten times the amount of the invoice.

9.3 If you think that any claim made by you against us may involve a claim for consequential loss, you must on or before the making of this contract give us details in writing of the nature and probable size of such possible claims for consequential loss, so that appropriate limitations on our liability may be agreed if necessary. You agree that if you do not give us such details in writing you will waive any claim against us for any consequential losses, of the nature and probable size of which you have not given us details.

9.4 You acknowledge that you have had the opportunity to negotiate a different limitation on our liability if you wish. You agree that the limitations on liability in this clause are fair and reasonable.

9.5 If any limitation of liability in this clause (or any other clause limiting liability made pursuant to clause 2.3) be governed by the Unfair Contract Terms Act 1977 and if in all the circumstances of the particular case that limitation of liability fail to satisfy the requirement of reasonableness in that Act, then you agree that our liability shall be restricted to the smallest sum which in all the circumstances of the particular case does satisfy the requirement of reasonableness in that Act.

10. YOUR INDEMNITY

10.1 You will indemnify us in respect of any claims, actions, costs, damage, expense and losses arising directly or as a consequence of a breach by you under this contract which shall include, without prejudice to the generality of the foregoing and subject to the special provisions of clause 4 in relation to Blanket Contract,

10.1 any defect in the Specification provided by you; and

10.2 any defects in materials or components supplied either by you direct or procured from your nominated supplier whether on a free issue basis or otherwise.

11. PROJECT DISCONTINUATION AND SUNSET

11.1 In the event that a project is terminated or changed whilst under purchase order, or otherwise sunset, the client shall be responsible for any unused components that have been purchased within the scope of the project.

12. PASSING OF RISK AND TITLE

12.1 Risk shall pass on delivery.

12.2 Where Goods supplied to you are made solely out of materials or components supplied by you, you acknowledge that we have a contractual lien over such goods until we receive payment in full for work undertaken by us in respect of those Goods. In case any lien is not satisfied within a reasonable time from the date upon which we first gave you notice of the exercise of our lien the Goods may be sold and the proceeds of sale applied in or towards satisfaction of every such lien and all proper charges and expenses in relation thereto and we will account to you for any surplus but you must account to us for any deficit.

12.3 Property in the Goods supplied by us shall not pass until we have received payment by cash or cleared funds of all outstanding invoices whether due or not due.

12.4 If you sell the Goods supplied by us before property has passed to you, pursuant to section 25 of the Sales of Goods Act 1979 you are able to give good title for those Goods to your sub-buyer. In this case, however, you must keep the proceeds of such a sub-sale on trust for us.

13. TERM AND TERMINATION

13.1 These provisions are in addition to any other right to terminate the contract for breach of any obligation.

13.2 Either party may at its option terminate this contract by notice in writing if the other party:

13.2.1 ceases to trade or threatens to cease trading; or

13.2.2 enters into a composition or voluntary arrangements with its creditors; or

13.2.3 has a receiver or administrator appointed over the whole or any part of its business or assets; or

13.2.4 has a creditor's winding up petition advertised against it in the appropriate Gazette; or

13.2.5 passes a resolution to wind up (other than for the purposes of a solvent amalgamation or reconstruction).

13.3 In the event of termination under clause 12.2 or termination for repudiatory breach:

13.3.1 You shall pay to us all sums outstanding for the supply of Goods or Services as at the date of termination whether or not the same have been delivered or collected.

13.3.2 You shall reimburse us with a sum equal to the cost of procuring materials or components required to supply during the period covered by the forecast whether or not those materials or components were acquired from your nominated supplier or otherwise. For the avoidance of doubt, such reimbursement shall include any cancellation fees or other penalty payments made to suppliers.

13.3.3 Subject to prior receipt of the sums referred to in sub-clause 12.3.1 and 12.3.2, you shall at your cost arrange for the collection of all outstanding Goods, materials and components within 7 days of the date of termination. If you shall not arrange such collection, then without further reference to you we may at our option dispose of such items in any manner we think fit provided that doing so shall not prejudice our right to pursue you for all outstanding sums.

14. CONFIDENTIALITY

14.1 Both parties shall keep confidential:

14.1.1 all business and trade secrets including business methods;

14.1.2 the details of any specification which we may have given you;

14.1.3 any other confidential information either party may have obtained from the other.

14.2 Neither party shall seek to solicit or seek to entice away any person employed by the other whether now or within 2 years the termination of this contract.

14.3 We will collect only personal information that you consent to provide, and hold it only on grounds permissible under GDPR; such as your explicit consent, to enter into or perform a contract, to satisfy a legal obligation, to maintain or protect your vital interests, to carry out public tasks or for legitimate business interests.

15. ASSIGNMENT

Neither party shall assign this contract without the consent of the other. However, we shall be at liberty to subcontract any services should we consider it appropriate.

16. FORCE MAJEURE

Active EMS shall not incur any liability for any loss or damage which may be suffered by you as a result, either directly or indirectly, of the supply of Goods or Services being prevented, hindered or delayed as a consequence of circumstances beyond their reasonable control including but not limited to Act of God, war, riot, strike, lockout, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm or difficulty in obtaining raw materials. Nor shall Active EMS be in repudiatory breach of this contract by reason of any such prevention, hindrance or delay.

17. WAIVER

Any waiver by either party of any breach of any of the terms of this contract by the other shall not be construed as a waiver of any earlier or later default of a similar nature.

18. PUBLICITY

Neither party shall publicise the existence of this contract without the prior consent of the other which consent shall not be unreasonably withheld.

19. INDUCEMENTS

19.1 We insist that all our employees, suppliers and customers comply with our Code of Business Ethics a copy of which is available on request.

19.2 You must not offer or supply any of our employees with any incentive, gift or other collateral advantage.

19.3 Any breach of this duty will be a fundamental breach of this contract and entitle us to terminate the contract.

20. HEALTH AND SAFETY

20.1 You must warn us of any matter which may affect the safety of our employees and others in the supply of Goods or Services.

20.2 Failure to comply with these duties shall be a fundamental breach of this contract and entitle us to terminate the contract.

21. NO LEGAL PARTNERSHIP

Nothing in this contract creates or shall be deemed to have created a legal partnership and neither party shall have authority to act as agent or otherwise bind the other or make any representation suggesting to any other person that a partnership may exist.

22. LIMITED INVALIDITY

If any paragraph, part of paragraph or any other provision of this contract shall be or become void or unenforceable, the remainder of this contract shall remain in full force and effect and neither party shall be discharged from its remaining obligations hereunder.

23. PROPER LAW AND JURISDICTION

This contract is governed by and shall be construed in accordance with the laws of England and the parties agree to the exclusive jurisdiction of the English Courts.