

**Sonobex Terms of Sale**

**1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in the Agreement.

Agreement: means the agreement between Sonobex and the Customer for the Supply of Goods and Services in accordance with these Conditions.

Business Days: 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 at clause 2.2. Conditions: means these Sonobex terms and conditions.

Confidential Information: has the meaning given in clause 12.1.

Customer: means the person or firm who purchases the Goods and Services from Sonobex.

Delivery Date: means the estimated date for delivery by Sonobex of the Goods set out in the Proposal.

Fees: means the fees for the Services as set out in the Proposal.

Goods: the goods referred to in the Order.

Intellectual Property Rights: all patents, rights to inventions, copyright and related rights, trade marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: means the Customer's written acceptance of the Proposal.

Proposal: means the written proposal for the Services provided by Sonobex to the Customer which includes the Specification, Services, Goods, Site and Fees detail.

Services: means the installation services to be provided by Sonobex in order to install the Goods at the Site as described in these Conditions and the Proposal.

Site: means the location at which the Goods are to be installed as stated in the Proposal.

Sonobex: means Sonobex Limited, registered in England and Wales with company number 8198008 and having its registered office at The Mansion, Building Research Establishment, Bucknalls Lane, Watford, Hertfordshire, WD25 9XX, UK.

Specification: means the technical design specification for the Goods as set out in the Proposal.

1.2 Words importing the singular shall also include the plural and vice versa.

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

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

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

**2. BASIS OF AGREEMENT**

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

2.2 The Order shall only be deemed to be accepted when Sonobex issues written acceptance of the Order at which point and on which date the Agreement shall come into existence ("Commencement Date").

2.3 The Agreement 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 Sonobex which is not set out in the Agreement.

2.4 Any samples, drawings, descriptive matter or advertising issued by Sonobex and any descriptions of the Goods or illustrations or descriptions of the Services contained in Sonobex's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods and services described in them. They shall not form part of the Agreement or have any contractual force unless expressly incorporated into the Proposal.

2.5 These Conditions apply to the Agreement 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.

**3. GOODS**

3.1 The Goods are as described in the Specification.

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

3.3 Sonobex reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

**4. DELIVERY**

4.1 Sonobex 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 code number 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.

4.2 Sonobex 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 Sonobex notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Sonobex shall use all reasonable endeavours to deliver the Goods to the Customer by the Delivery Date but any such date shall be estimated only and time for performance by Sonobex is not of the essence. Sonobex shall not be liable for any delay in the delivery of the Goods caused by a Force Majeure Event or the Customer's failure to provide Sonobex with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If Sonobex 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.

4.6 If the Customer fails to accept or take delivery of the Goods then except where such failure or delay is caused by a Force Majeure Event or by Sonobex's failure to comply with its obligations under the Agreement in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day following the day on which Sonobex notified the Customer that the Goods were ready; and

(b) Sonobex shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If 20 Business Days after Sonobex notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Sonobex may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

**5. QUALITY OF GOODS**

5.1 Sonobex warrants that on delivery and for a period of 12 months from the date of delivery ("Warranty Period") the Goods shall:

(a) conform in all material respects with the Specification

(b) be free from material defects in design, material and workmanship

(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 Sonobex.

5.2 Subject to clause 5.3, if:

(c) the Customer (if asked to do so by Sonobex) returns such Goods to Sonobex's place of business at Sonobex's cost,

Sonobex shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Sonobex shall not be liable for the Goods' failure to comply with the warranty if:

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

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

(c) the defect arises as a result of Sonobex following any drawing, design or part of the Specification supplied by the Customer;

(d) the Customer alters or repairs such Good without the written consent of Sonobex;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

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

(a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

(b) Sonobex is given a reasonable opportunity of examining such Goods; and

**6. INSTALLATION SERVICES**

6.1 Sonobex shall supply to the Customer, within a reasonable time before any Delivery Date, such information and assistance as may be necessary to enable the Customer to prepare the Site(s) for the installation of the Goods.

6.2 Sonobex shall use all reasonable endeavours to complete the installation of the Goods at the Site(s) by the date of installation that may be stated in the Proposal, but any such date shall be an estimate only and time shall not be of the essence for the performance of the Services. Sonobex shall not be liable for any delay in the delivery of the Services caused by a Force Majeure Event or the Customer's failure to provide Sonobex with adequate delivery instructions or any other instructions that are relevant to the supply of the Services.

6.3 Sonobex warrants to the Customer that:

(a) Sonobex will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services; and

(b) the Services will be provided in accordance with all applicable legislation from time to time in force.

6.4 Sonobex shall not give any other warranty or guarantee, expressed or implied, for the devices, instruments, material or goods delivered by Sonobex than specifically agreed upon in the Agreement.

6.5 If an acceptance test is required to be carried out, Sonobex shall ensure that the Goods are presented for acceptance test on the date agreed.

6.6 If any Goods fails to pass any acceptance tests, the Customer shall within 5 Business Days from the completion of the acceptance tests provide a written notice to this effect giving details of the failure(s). Sonobex shall remedy the issues at its expense provided any failure is not a result of the Customer failing to comply with the storage, installation, maintenance, testing or other instructions provided by Sonobex (in which case the Customer shall bear the costs of remedying the defects and/or deficiencies).

6.7 If any Goods fail in some material respect to pass any repeated acceptance tests more than [6] months after the date of the first Acceptance Tests, then the Customer may, by written notice to Sonobex, choose at its sole discretion:

(a) to allow Sonobex the opportunity to try and remedy the defects in order to perform further acceptance tests; or

(b) to reject the Goods as not being in conformity with the Agreement, in which event the Customer may terminate the Agreement by giving notice in writing.

6.8 If within 5 Business Days of running the final acceptance test, the Customer either does not notify Sonobex of any failure to pass the acceptance test or fails to provide written confirmation to Sonobex that the Goods have passed the acceptance test, Sonobex will be deemed to have passed the acceptance test.

**7. PRICES AND PAYMENT**

7.1 In consideration of the Goods and Services the Customer shall pay Sonobex the Fees as set out in the Proposal.

7.2 The Customer shall pay each invoice which is properly due, undisputed and submitted to it by Sonobex within 30 days of receipt to a bank account nominated in writing by Sonobex. Parties acknowledge that invoices may be issued by email.

7.3 If the Customer does not make payment on or before the date on which it is due, interest shall be payable on the overdue amount at the rate of 3% above the Bank of England base rate from time to time. Interest shall be payable at this rate both before and after any judgment is made against the Customer until the date on which payment in cleared funds is received in full, including all accrued interest.

7.4 The Customer shall make all payments due under the Agreement without any deduction by way of set-off, counterclaim, discount or otherwise unless the Customer has a valid court order from a court in England and Wales requiring an amount equal to or more than such deduction to be paid to Sonobex by the Customer, or unless such rights relied on cannot be excluded by the law of England and Wales or the insolvency laws of the jurisdiction in which the Customer is resident.

**8. TITLE AND RISK**

8.1 Risk in the Goods shall pass to the Customer on completion of delivery.

8.2 Title to the Goods shall pass to the Customer on payment of all Fees due for the Goods.

**9. INTELLECTUAL PROPERTY RIGHTS**

9.1 The Customer acknowledges that all pre-existing Intellectual Property Rights of Sonobex shall remain owned by Sonobex.

9.2 All Intellectual Property Rights in the Goods or as may be created or developed by Sonobex in providing the Services, shall remain owned by and vest in Sonobex.

**10. LIMITATION OF LIABILITY**

10.1 Neither party shall be liable to the other for:

(a) any indirect, special or consequential loss or damage; or

(b) loss of data or other equipment or property; or

(c) economic loss or damage; or

(d) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or

(e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business damage to goodwill,

even if advised in advance of the possibility of any such losses or damages.

10.2 Each party unconditionally waives any rights it may have to seek to rescind the Agreement on the basis of any statement made by the other (whether made carelessly or not), unless such statement was made fraudulently.

10.3 Nothing in the Agreement shall have the effect of excluding or limiting any liability for death or personal injury caused by negligence or for fraud.

10.4 Subject to clause 10.1 and clause 10.4, Sonobex's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, to the equivalent of the total Fees paid by the Customer under the Agreement.

#### 11. ASSIGNMENT

The Customer shall not, without the prior written consent of Sonobex, assign, transfer, charge or deal in any other similar manner with the Agreement or its rights or any part of them under the Agreement, subcontract any or all of its obligations under the Agreement, or purport to do any of the same.

#### 12. CONFIDENTIALITY

12.1 Each party undertakes that it shall not at any time during the Agreement and for a period of five years after

termination disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers ("Confidential Information"), except as permitted by clause 12.2.

12.2 Each party may disclose the other party's Confidential Information:

(a) to its employees, officers, agents, consultants or subcontractors ("Representatives") who need to know such information for the purposes of carrying out the party's obligations under the Agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 12 as though they were a party to the Agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and  
(b) as may be required by law, court order or any governmental or regulatory authority.

12.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in the Agreement are granted to the other party or to be implied from the Agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

#### 13. TERMINATION

13.1 Either party may terminate the Agreement by giving written notice to the other party if any of the following events occurs:

- (a) the other party commits a breach of the Agreement which (in the case of a breach capable of remedy) has not been remedied within 30 days of the receipt by the other of a notice specifying the breach and requiring its remedy; or
- (b) the other party commits the same or substantially similar breaches of its obligations under the Agreement more than six times within any period of six consecutive months; or
- (c) a winding-up order or bankruptcy order is made against the other party; or
- (d) the other party passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party); or
- (e) the other party has appointed to it an administrator or an administrative receiver; or
- (f) an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the other party's assets;
- (g) the other party ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (h) any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into; or
- (i) the other party ceases, or threatens to cease, to carry on business; or
- (j) any event analogous to those described in clauses 13.1(c) to clause 13.1(i) occurs in relation to the other party in any jurisdiction in which that other party is incorporated, resident or carries on business.

13.2 On termination of the Agreement for any reason and subject as otherwise provided in the Agreement to any rights or obligations that have accrued before termination, neither party shall have any further obligation to the other under the Agreement.

#### 14. OBLIGATIONS ON TERMINATION

On termination each party shall promptly:

- (a) return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it in connection with the Agreement;
- (b) return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
- (c) erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- (d) on request, certify in writing to the other party that it has complied with the requirements of this clause 14.

#### 15. SURVIVAL OF OBLIGATIONS

Any termination of the Agreement shall not affect any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after termination, and for the avoidance of doubt clauses 8, 9, 10, 12, 14, 15, 17, 19 and 20 shall survive termination.

#### 16. FORCE MAJEURE

16.1 Neither party shall be liable to the other, or be deemed to be in breach of the Agreement, by reason of any delay in performing, or failure to perform, any of its obligations under this if the delay or failure was beyond that party's reasonable control (including without limitation fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war, warlike hostilities or threat of war, terrorist activities, accidental or malicious damage and any prohibition or restriction by any government or other legal authority which affects the Agreement and which is not in force on the date of the Agreement).

16.2 A party claiming to be unable to perform its obligations under the Agreement (either on time or at all) in any of the circumstances set out in clause 16.1 shall notify the other party of the nature and extent of the circumstances in question as soon as practicable.

16.3 This clause 16 shall cease to apply when such circumstances have ceased to have effect on the performance of the Agreement and the party affected shall give notice to the other party that the circumstances have ceased.

16.4 If any circumstance relied on by either party for the purposes of this clause 16 continues for more than six months, the other party shall be entitled to terminate the Agreement by giving one month's notice.

#### 17. DISPUTE RESOLUTION PROCEDURE

In the event the Parties are unable to resolve a dispute between them arising out of or relating

to the Agreement, and except for claims for interdict or other similar relief, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by the Centre for Effective Dispute Resolution and the mediation will take place in [London]. The mediation agreement referred to in the Model Procedure shall be governed by, and construed and take effect in accordance with the substantive law of England. If the dispute is not settled by mediation within 10 days of commencement of the mediation or within such further period as the Parties may agree in writing, the parties shall be free to seek to resolve the dispute by such other means as they may separately determine.

#### 18. NOTICES

18.1 Notices shall be delivered to the address of the intended recipient set out at the beginning of the Agreement (or to such other address as the recipient may notify to the other party from time to time). Notices must be in writing which, for the purposes of the Agreement, includes email but not fax.

18.2 The e-mail addresses of each party are:

Sonobex: [TBC]

the Customer: [TBC].

18.3 Notices shall be deemed to have been duly given:

- (a) when delivered, if delivered by courier or other messenger during normal business hours; or
- (b) when sent, if transmitted by email during normal business hours and no delivery failure message is subsequently received; or
- (c) on the third business day following mailing, if mailed by national ordinary mail, postage prepaid, in each case addressed to the address or email address stated in the Agreement or such other address and/or email address as notified to the other party.

#### 19. GENERAL

19.1 No term of the Agreement shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

19.2 Save as otherwise provided in the Agreement, each party shall pay its own costs in connection with the negotiation, preparation, execution and performance of the Agreement, and all documents ancillary to it.

19.3 The Agreement constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Agreement.

19.4 Nothing in the Agreement and no action taken by the parties pursuant to the Agreement shall constitute or be deemed to constitute a partnership or joint venture between the parties, or shall constitute either party as the agent, employee or representative of the other party. The parties to the Agreement are independent contractors.

19.5 No variation of or amendment to the Agreement shall bind either party unless made in writing and signed by both parties hereto.

19.6 No delay, omission or failure by either of the parties to exercise any right or remedy shall operate as a waiver. Any partial exercise of a right or remedy shall not preclude any other or further exercise of any such right of action.

19.7 If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. Further, if any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

19.8 The Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart, when executed, shall be an original, but all counterparts shall together constitute one and the same instrument.

#### 20. GOVERNING LAW AND JURISDICTION

20.1 The Agreement shall be governed by and construed in all respects in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales

20.2 Nothing in this clause 20 shall limit the right of Sonobex to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude Sonobex from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.