

# Terms and Conditions of Sale

## Ellab Monitoring Solutions Ltd

Any sale and purchase of products and/or services ("Products") from Ellab Monitoring Solutions Ltd or any of its affiliated companies (collectively "Ellab", "we", "us" or "our") includes the acceptance of the following terms and conditions of sale, which are always an inseparable part of any purchase order, contract or agreement, accepted by and/or entered into with us. We will only supply Products on the terms and conditions described herein, and other terms and conditions or similar documents shall not form part of the sale and purchase of our Products unless agreed in writing.

**1. Tender and Confirmation:** Any tender is subject to written confirmation and is submitted without any obligations, unless we have agreed to the opposite in writing. No binding agreement shall be constituted unless an order is accepted in writing by us, by means of an order confirmation. All alterations to order specifications, including verbally agreed alterations, must be confirmed in writing by us for validity.

**2. Limits of Contract:** Our tender and order confirmation includes only such Products and work as specified therein.

**3. Drawings, performance etc.:** All illustrations, drawings, specifications, instructions, manuals etc. supplied by us shall be used by the buyer for its specific purpose only and shall not be revealed to any third party. The information stated in the said documentation as well as in our letters, tenders, catalogues or other publicity material shall be regarded as a guidance only and is not binding to us unless stated to be so in writing. We will accept no liability for failure to attain any performance figures quoted by us, unless we have specifically guaranteed them in writing, subject to any tolerances specified or agreed to by us

**4. Modifications:** We reserve the right to, at any time, carry out modifications to designs and specifications of purchased Products, provided that such modifications do not materially reduce the buyer's possibilities of utilizing the purchased Products.

**5. Prices, Taxes and Duties:** Unless otherwise specified in our tender, quoted prices are firm and valid for thirty (30) days from the date of the tender. The price being firm is, however, conditional on the Products being delivered no later than 90 days from the date of the tender, otherwise the prices may be subject to changes. Unless otherwise agreed in writing, all Products are sold on Ex-Works terms (International Commercial Terms 2010). In excess of the price for the purchased Products, the buyer is liable to pay VAT as well as any tax, fee or duty, and permission fees from public authorities or others, which is or may later be imposed on the purchased Products or in accordance with the installation or delivery.

**6. Handling, Cancellation and Re-stocking Fees:** For orders/deliveries with a total value of less than GBP£ 150 we charge a handling fee of GBP£ 30. No contract for goods ordered may be cancelled by the Customer. If Ellab agrees to accept a cancellation it shall be entitled to charge the Customer a cancellation fee of up to fifty percent (50%) of the purchase price in respect of costs and expenses incurred and other damages without prejudice to any right to claim further costs expenses and damages howsoever arising. All goods returned with no genuine reason will be subject to a re-stocking fee of 25% of the invoice price together with VAT thereon if applicable.

**7. Terms of Payment:** Terms of payment are net cash in the currency of the contract on the due date. In the event that any amount payable to us is not received by us on the due date, we reserve the right, without prejudice to any other right:

- to charge the buyer 1.5% interest for each 30 days period commenced that the amount remains unpaid;
- to suspend our performance of the contract including the use of Software (as defined below); and
- to terminate the contract in writing, in which case the buyer shall return all Software and Goods to us.

Once the Products have been taken into use, possible defects of the Products do not entitle the buyer to delay payments.

**8. Right of Property / Right of Use:** The right of property to any Product shall not pass to the buyer until we have received the full payment for such Product.

As regards machine software, user orientated software, software packages, licenses and tools ("Software"), the buyer only acquires the property right to the physical media that contains the relevant Software, along with a non-exclusive, non-sublicenseable, non-transferable, limited, and revocable right to use the relevant Software on the terms and conditions stated in our End User License Agreement ("EULA"). No intellectual property rights are transferred from Ellab to the buyer.

**9. Delivery:** The time of delivery shall be calculated from the date on which a final order confirmation has been provided by us, and down payments, if any, have been received by us. Any quoted time or date for dispatch or delivery is estimates only. We will use our best endeavors to dispatch by the date quoted, but will not accept any liability for failure to do so. The date for dispatch or delivery shall be extended by a reasonable period if delay in dispatch or delivery is caused by instructions or lack of instructions from the buyer or by any cause beyond our reasonable control, inclusive of war, industrial dispute and any other force-majeure including failing supplies from our suppliers. Any reasonable delay in delivery does not entitle the buyer to cancel an order or to refuse receipt of the ordered Products. We accept no responsibility or liability for delays in delivery as a result of the buyer's overdue payments. In no circumstance shall delivery be contingent upon the final installation of the Products by us, as delivery will have occurred once the Products have physically been delivered Ex-Works, unless specified otherwise in the order confirmation.

**10. Installation:** The buyer shall provide access to the premises or the area, where the Product is to be installed, in accordance with our installation instructions from time to time. The buyer shall provide the necessary labour, sufficient mains and electricity installations, all cables and cabling, sufficient earth connections and, if necessary, suitable products for testing purposes. Our technicians must have free access to the installation site and be able to perform the services, without being hindered or delayed by others.

**11. Extra Cost:** Should we incur any extra cost due to e.g. variation or suspension of work by the buyer's instruction or lack of instruction, delays, overtime, unusual work hours, mistakes, or work for which we are not responsible, such extra cost shall be added to the contract price and paid for by the buyer accordingly.

**12. Return Merchandise Authorisation (RMA):** When returning a product for repair/calibration, ensure it is packed properly and the RMA number is clearly displayed on the packaging. You must ensure that any probes, cables and/or power supplies are also returned so that the product can be tested as a complete system. In case of improper packaging resulting in damage or loss in transit, Ellab Monitoring Solutions Ltd reserves the right to reject the return of products at the customer's expense. We expect the product to be cleaned before being sent to Ellab Monitoring Solutions Ltd. Upon receipt, if any products are not ready for services, your order may be subject to a cleaning fee.

**13. Commissioning and Testing of Data Systems and Software:** Following the installation of the relevant Software, a running-in and testing period must be expected. This period is normally 3 months from the date of the delivery. The buyer shall try out the total system to detect possible defects of the Software or system units when those are operating under the conditions prevailing in the buyer's plant and report such possible defects to us, which we will then correct or adjust, if possible. Such possible Software or system unit defects shall not entitle the buyer to withhold payment. After the completion of the running-in and testing period, the corrections of possible defects are considered modifications to the original specification, and the buyer will be charged at the prices in force at such time. We may charge additional payment for any modifications to the functions of the Software or new (added) functions as compared with those originally specified, if such payment can be considered reasonable. If we are not in possession of a written notice from the buyer 3 months after the date of the delivery giving details of possible Software or systems

defects to be corrected, the running-in and testing period shall be considered accepted and concluded.

**14. Hardware Defects after Delivery:** We will repair, or at our option replace hardware defects of Ellab manufactured Product, which under proper use of the Product appear within a period of twenty four (24) months, unless otherwise expressly agreed, after the date of delivery, and which arise solely from our gross negligence, provided that such Products or parts, which may be defective, have been returned to us. The risk and cost of returning such Products or parts, which may be defective, and the risk and cost of delivering the repaired or new Products or parts shall be carried by the buyer. Goods found not to be defective (or when the defect is attributable to the Customer's design or materials) will be returned to the Customer at its expense and subject to a testing charge of 15% of the invoice price together with VAT thereon if applicable. However, the risk and costs of returning and delivering will be carried by Ellab if the defect is covered by a warranty. Our liability under this clause, which do not apply to consumables such as batteries etc., shall be in lieu of any non-mandatory warranty or conditions implied by law as to the quality or fitness for any particular purpose of the relevant Product.

If Products are sold on CIF terms (International Commercial Terms 2010), we will repair or, at our option replace free of charge Products lost or damaged in transit, provided that we are given written notification of such loss or damage within such time as will enable us to comply with the carrier's conditions of carriage as affecting the relevant loss or damage in transit.

**15. Liability:** We are only responsible for the capacity and the performance of the Products supplied being sufficient and/or suitable for the buyer's purpose, provided the buyer have given us full and accurate particulars in writing of the buyer's requirements in this respect and of the conditions under which the Products will be required to operate. Ellab shall under no circumstances be liable for loss of production, loss of profit or any other indirect or consequential loss, and we shall under no circumstances be liable if the Product delivered has been altered or modified in any shape or form by any party other than us. Further, we are not liable for defects caused by, or damage resulting from, improper use or operation, improper or insufficient maintenance, designs or materials stipulated by the buyer, failure to arrange for calibration of the equipment at least once a year or such shorter interval as the customer's handling, use and application may require/make necessary in order to ensure accuracy, use or connection of machinery, equipment or software not supplied by us, technical interference in the equipment done by other than our technicians, insufficient power supply, earth connection, cabling or accommodation, use of the equipment outside its application or physical specifications or violence, overload, fire, flood, excessive mains noise, excessive EMI/RFI, welding lightning or similar. We maintain a reasonable level of general and product liability insurance cover. The buyer, however, is responsible for taking out its own insurances, including liability insurances, as well ensuring safe working conditions on the buyer's premises. We can only accept liability for personal injury and damage to property if caused by our gross negligence. Our total liability for personal injury and damage to property shall be equal to the damages or losses suffered, but shall not exceed GBP£ 1,000,000.

**16. Patents:** In case the proprietor of a patent, copyright or industrial design, in force in the country in which delivery of the Products to the buyer has taken place, issues an infringement claim against the buyer relating to Products supplied by us, the following shall apply: We shall reply or seek to negotiate for settlement of the claim provided the buyer has given us notice in writing at the earliest possible opportunity permitting us at our expense to conduct any litigation that may ensue and all negotiations for the settlement of the claim. In case a court ruling or settlement entered into by us renders the buyer's further use of the goods impossible, we shall, at our own expense choose to apply one of the following solutions:

- secure the buyer's on-going use of the Products in unchanged condition;
- exchange the goods with non-infringing Products;
- modify the Products to become non-infringing Products; or
- take back the Products and refund the purchase price at its depreciated value at the time of taking the Products back. This depreciation takes place by equal amounts for every year of the lifetime of the goods as determined by us.

We are liable, only provided the infringement (as determined by a court ruling or settlement) is solely based on our standard Products. We shall not be liable if any infringement is stated based on Products produced and delivered by us in accordance with a design, instruction, or other input furnished or given by the buyer. Further, we shall not be liable for any stated infringement taking into account any use, amendments, etc. of the Products, performed by the buyer or any third party, including the use of such article or material in a manner or for a purpose or in a foreign country not specified by or disclosed to us, or to any infringement which is due to the use of such article or material in association or combination with any other article or material not supplied by us. The above terms represent our total liability stemming from claims made in connection with infringement of immaterial rights, including patents, copyrights and industrial designs.

**17. Copying of Software / Use of Software:** All Software and associated documentation supplied by us is covered by copyright and may not be copied in any way not authorised by Ellab.

**18. Export:** If the buyer or any of the buyer's customers intend to export Products purchased from us, the buyer shall notify us in writing, as to which country the exportation is intended and obtain our prior written consent to such export. If the exportation takes place without our prior written consent, we will not have any liability to or in connection with the Products, including product liability. We cannot be committed or ordered to pay any compensation or damages to the buyer or any of the buyer's customers, or to any third party, as a consequence of the buyer or any of the buyer's customers exporting Products purchased from us.

The buyer shall be solely responsible for obtaining any necessary export permission or license from the proper authorities if the buyer, or any of its customers, intends to export any Products, to any country for which such permission or license is required.

**19. Resale:** The buyer declares that its repeated or continuous purchases of Ellab Products meant for resale shall never result in the buyer claiming to be a dealer, sole dealer, agent, distributor or similar of Ellab or its goods. The buyer declares not to have such status, neither in the case of the buyer's name and address being listed in advertisements, magazines, sales literature or similar as one of our trade connections or similar. The buyer declares to be aware of and consent to the understanding and fact that status as dealer, sole dealer, agent, distributor or similar, with the associated rights and obligations for the parties, exists only, provided the buyer and we have entered into an exclusive distributor agreement by signing an Ellab standard distributor agreement form. We reserve the right to terminate the co-operation and trade with any buyer who buys or has bought Ellab Products for the purpose of reselling the same, without any notice and approval, and without paying any compensation, damage or the like whatsoever, irrespective of the length of the trade relation or the volume of the trade. We cannot be committed or ordered to pay any compensation or damage whatsoever to the buyer who buys or has bought Products for the purpose of reselling the same as a consequence of terminating the co-operation and trade as described above.

**20. Cancellation:** Cancellation or suspension of an order or a contract, in whole or in part, is not possible without our agreement in writing.

**21. Application Law:** These terms and conditions are subject to and construed in accordance with laws of England and Wales. Any disagreement or claim that might arise out of these terms and conditions which the parties cannot solve through negotiation shall be settled by the exclusive jurisdiction of the courts of England & Wales. The proceedings shall be conducted in English. Products and work under contract shall, as far as may be reasonable practicable, continue during the legal proceedings and no payments, which are or shall become due, shall be withheld on account of such proceedings.