

# General Conditions for component deliveries

The following Conditions apply to all offers made and contracts entered into by WindowMaster A/S (“WMA”) unless specified otherwise.

## 1. Definitions

- 1.1. The following definitions shall apply to these Conditions:
- 1.2. “Contract” means any contract entered into between the Customer and WMA for the supply of Services and/or Products and which shall include the terms set out in the WMA quotation or Contract order document and these Conditions;
- 1.3. “Contract Price” means the price agreed with the Customer for the Services and/or Product and which is based on the types of market rates, duty, tax and other pricing elements which are payable by a person in the capacity of WMA at the date of the Contract; “Customer” means the party to whom WMA will provide the Services and/or Products;
- 1.4. “Development” means the development or project being undertaken by the Customer to which the Services relate; “Product/s” means WMA Product/s supplied under the Contract including as supplied as part of the Services;
- 1.5. “Relevant Documents” means any document such as a specification or brief which defines the Services and/or Products; “Services” means any service provided to the Customer by WMA including Installation, Commissioning and Maintenance services; “Site” means the site of the Development.

## 2. Basis of Contract

- 2.1. All quotations and offers given, confirmations of orders accepted and contracts entered into by WMA are subject to these Conditions which supersede all other conditions.
- 2.2. A Contract is formed by signing a contract in a form agreed with WMA, or upon WMA receiving and acknowledging in writing the Customer's acceptance of WMA's quotation for the Services or by WMA's written confirmation of acceptance of the Customer's order which shall in all events be deemed based on these Conditions.

- 2.3. All documents, designs and other information issued by WMA are the property of WMA as is all intellectual and proprietary rights in the same. Such material and any information submitted to the Customer by WMA shall not, without WMA's written consent, be published or made available to any third party.

## 3. Communications

- 3.1. All communications by the Customer shall be in writing.

## 4. The Services

- 4.1. WMA shall carry out the Services using reasonable skill and care and in accordance with the terms of Contract including the Relevant Documents and may subcontract the whole or part of the Services.
- 4.2. WMA shall not be liable for errors of negligence of any third party retained by or on behalf of the Customer in relation to the Development.

## 5. Maintenance services

- 5.1. Notwithstanding any other term, maintenance services (“Maintenance”) will be carried out in accordance with the terms of Contract and as set out in this clause 5.
- 5.2. Maintenance will take place within the hours of Monday to Friday 8:00 – 16:00.
- 5.3. The exact time of a Maintenance call will be communicated to the Customer at the latest 3 weeks in advance. Should the Customer wish to change the time of the call, WMA must be contacted as soon as possible and at least one week before the time of the call proposed by WMA, otherwise the time will be considered fixed. The Customer is obliged to pass on information in regard to the Maintenance call to relevant personnel/ inhabitants etc. and facilitate access by WMA to the NV Control System or NV Advance System (“System”).



- 5.4. The Customer must ensure that access is secured to all parts of the premises where inspection of the System is necessary. Should installation drawings, or equipment (ladder, lift etc.) be required by WMa the Customer must provide these at its own cost including any necessary operating personnel.
- 5.5. If Maintenance of any part of the System cannot be undertaken as a result of a lack of information or the inability of WMa to obtain access for whatever reason, or where WMa is involved in delay and/or disruption as a result of the Customer's failure to comply with clauses 5.3 and 5.4 WMa shall not be obliged to undertake Maintenance but the Customer shall remain responsible for the relevant part of the Contract Price and in addition WMa shall be entitled to compensation in regard to transport and additional costs incurred as a result, including supplementary hours, overtime on weekends, bank holidays and weekends.
- 5.6. The following will be charged as additional cost to the Contract Price at WMa's price list current at the date of the Maintenance call and which shall be invoiced separately:
- a) Replacement or repair of wearing parts;
  - b) Tasks made necessary by conditions for which the Customer is responsible, or in regard to which neither WMa or the Customer have control including weather, burglary, malicious damage, structural changes, repair or other works by the Customer or others, incorrect operation, external impact, damage due to faulty sensors from other suppliers, incorrect window function or signaling errors due to controls supplied by others such as BMS and BUS systems.
  - c) WMa's reasonable expenses for establishing and operation of a telephone system for WMa's on line access to the System and Maintenance calls necessitated by the Customer's failure to keep the telephone system operational.
  - d) Any failure by the Customer to comply with the obligations in clause 6 to the extent that WMa is liable for additional costs but which may include WMa's costs for any necessary additional time incurred in relation to carrying out the Services.
- 5.7. A Maintenance check list will be provided by WMa for signature by the Customer or an authorised representative.
- 5.8. Maintenance work which is not covered by the

Contract Price will be carried out in connection with the Maintenance calls without express confirmation with the Customer where the cost of such work does not exceed £200 plus VAT. For work of a greater value WMa will require the Customer's confirmation before undertaking such work.

## 6. Customer's Obligations

- 6.1. The Customer shall promptly supply in writing to WMa complete and accurate information about the Development, the Site, third parties retained by or on behalf of the Customer (whose full co-operation and assistance shall be procured) and any matter which may influence the Services including design changes.
- 6.2. The Customer shall supply all facilities and assistance necessary for the execution of the Services including scaffolding, means of access, power supply and site accommodation.
- 6.3. The Customer will ensure that all electrical installations and systems are in accordance with information provided to WMa for the purposes of their quotations or undertaking of Services. In regard to Products any installation works undertaken by parties other than WMa must be in accordance with WMa issued and approved drawings and specifications and in advance of any testing and commissioning of the Products the relevant power supply must be enabled.
- 6.4. It is the Customer's responsibility to install a dedicated telephone line for use with the Products.

## 7. Delivery / Commencement and Completion

- 7.1. Either:
- a) WMa will use reasonable efforts to deliver Products to the location specified in the Contract on the Delivery Date; and/or
  - b) WMa will use reasonable efforts to commence the Services on the Commencement Date and to complete them by the Completion Date but where no such Dates are agreed then on such other dates as otherwise notified to the Customer by WMa.
- 7.2. Any delivery/commencement/completion date agreed with the Customer is an estimated time for delivery of Products or commencement or completion of Services and shall not be made of the essence by notice.
- 7.3. WMa will be entitled to an extension of the



Delivery Date, Commencement Date or Completion Date upon it becoming apparent that:

- a) any act or omission on the part of the Customer (including any request by the Customer for a Variation (as defined below) or of any third party for whom the Customer is responsible; or
  - b) any matter identified in clause 7.4; will have or has had an effect on the ability of WMa to meet such Dates.
- 7.4. WMa shall not be in breach of contract or otherwise liable for delay or non-performance caused by strikes, lock-outs, industrial actions or trade disputes, difficulties due to import restrictions or obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery, failure of suppliers, sub-suppliers or contractors, or events beyond the control of WMa or its suppliers, or contractors. WMa will use reasonable endeavours to inform the Customer of any such events.
- 7.5. The Customer shall reimburse WMa in respect of costs, losses, liabilities and expenses suffered by WMa resulting from delay caused by the act or omission of the Customer or third parties engaged in relation to the Development.
- 7.6. WMa will not be liable for any loss, (including Consequential Loss as defined below and loss of profit) costs, damages, charges or expenses caused directly or indirectly by delay in delivering Products or commencing or completing the Services nor will any such delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days. In the case of delivery of the Products by instalments, the Customer will not be entitled to treat the late or non-delivery of the Products in any one instalment as a breach of the Contract.
- 7.7. The Customer will take delivery of Products on the Delivery Date or on another date agreed or notified. The Products shall be at the Customer's risk from the time that they are delivered to the Site or other agreed address. If for any reason the Customer will not accept the Products on delivery, risk in the Products will pass in any event to the Customer, the Products will be deemed to have been delivered, and WMa may store the Products at the cost of the Customer. Delivery subsequent to such a delay will be at the sole cost and risk of the Customer and shall be the Customer's responsibility to organise.
- 7.8. WMa's liability for non-delivery shall be limited to replacing the Products within a reasonable time

or issuing a credit note against any invoice raised for the Products.

- 7.9. "Variation" means any addition, omission, alteration or substitution of the Products or Services. The Customer shall be entitled to instruct a Variation which WMa shall comply with having agreed compensation in advance for any effect on the Contract Price or time.

## 8. Title to Products

- 8.1. WMa shall retain title to the Products until payment in full under the Contract or any other contract with the Customer.
- 8.2. If the Customer fails to make payments to WMa when due, or if WMa terminates the Contract WMa will have the right to enter any premises where Products owned by WMa may be and repossess and dispose of any such Products, and/or to require the Customer not to resell or part with possession of any Products owned by WMa until the Customer has paid in full all sums due.

## 9. Price

- 9.1. The price payable for the Products and Services shall be the Contract Price which shall be exclusive of VAT and other charges and fees to public authorities as appropriate and any other amount due in accordance with the Contract.
- 9.2. If after 12 months from the date of the Contract the Products have not been delivered to the Customer or the Services have not been performed and the market prices of the Products or the Services upon which the Contract Price was based has increased, the Contract Price shall be increased by the net amount of the difference accounting for the then applicable market prices.

## 10. Payment terms

- 10.1. Payment of any amount under the Contract shall become due on the date of WMa's invoice. The final date for payment shall be 30 days after the date an amount becomes due.
- 10.2. The Customer shall give notice to WMa not later than five days after the date on which a payment becomes due specifying the amount of the payment proposed to be made, and the basis on which that amount is calculated.
- 10.3. The Customer may not withhold payment after the final date for payment of a sum due under this Contract unless he has given written notice



of intention to withhold payment. To be effective such notice must:

- a) specify the amount proposed to be withheld and the ground for withholding payment and the amount attributable to each ground; and
  - b) such notice must be given not later than five days before the final date for payment.
- 10.4. Amounts due and unpaid beyond the final date for payment shall be payable with interest at the rate of 8% over the base rate from time to time of Lloyds Bank Plc until payment is made or received.
- 10.5. If the Customer shall fail to pay any amount due by the final date for payment without service of a notice as specified in clause 10.3 and such failure continues for longer than 7 days after WMa has given the Customer a written notice of intention to suspend performance of its obligations under this Contract then WMa may suspend performance until payment in full occurs. Such suspension shall not be treated as any failure on the part of WMa to comply with the Contract.
- 10.6. In the event that it is agreed that the Customer may apply a retention amount in respect of any payments made under this Contract the Customer shall accept WMa's retention bond in lieu of making any deduction from payments.
- 10.7. In any case where the Contract Price exceeds the amount of £10,000 WMa may request and the Customer shall then provide a properly executed insurance bond in a form to be mutually agreed but which shall provide for WMa to be able to make a claim on the bond in the event of default by the Customer in regard to, payments of amounts due and owing, or other obligation under the Contract.
- 10.8. The Customer may only set off or exercise its right of retention or stoppage in transit for claims that WMa has acknowledged in writing to the Customer or which have been confirmed legally through binding settlement. Failure to comply with this requirement will mean that the Customer shall pay the full amount of the invoice.
- 10.9. In the event that the Customer is in default in payment for any delivery from WMa, all WMa's other claims vis-à-vis the Customer shall immediately fall due for payment.

## 11. Liability

- 11.1. WMa does not exclude or limit its liability in negligence for death or personal injury, or for

fraud or willful default, or otherwise insofar as any exclusion or limitation of its liability is void, prohibited or unenforceable by law.

- 11.2. WMa shall only be liable for any breach of Contract to the extent that it is just and equitable 11.2 Subject to Sections 11.1, 12.2 and 12.4, all representations, warranties and conditions implied by trade custom, course of dealing, statute, common law or otherwise are excluded to the fullest extent permitted by law.
- 11.3. Subject to Section 11.1, in no circumstances shall WMa be liable to the Customer, in contract, tort, negligence or otherwise, for any incidental or Consequential Loss (as defined below) or for any special, exemplary, liquidated or other damages or penalties of whatever nature or other financial loss whatsoever arising out of or in connection with the Contract including the use or resale (if applicable) of any Products.
- 11.4. The parties hereby confirm that notwithstanding any other provision of the Contract, the Contract shall not and shall not purport to confer on any third party any right to enforce any term of the Contract for the purposes of the Contracts (Rights of Third Parties) Act 1999.
- 11.5. Where the Services do not include for WMa to advise on the design or specification of the Products or their use, then any assistance, consultation or any design proposals, including drawings, calculations and ideas which may be provided to the Customer should be relied upon by the Customer at its own risk and only subject to advice from an appropriate expert.
- 11.6. In the event that notwithstanding the provisions of these Conditions WMa is found liable for any loss suffered by the Customer arising in any way out of or in connection with this Contract, that liability shall in no event exceed the Contract Price and WMa's liability shall not exceed that proportion of such liability which it would be just and equitable to require WMa to be responsible for having regard to the extent of WMa's responsibility and on the basis that all other designers and contractors responsible for or involved in the matter to which the claim relates shall be deemed to have provided contractual undertakings on terms no less onerous than this Contract in respect of the performance of their services and shall be deemed to have paid to the Customer such proportion of any liability which it would be just and equitable for them to pay.



## 12. Warranty relating to Products

- 12.1. The Customer undertakes to examine all Products without delay upon receipt and any defects must be notified to WMa in writing without delay.
- 12.2. WMa warrants that Products will be free from material defects for a period of 12 months from the time that risk in them passes to the Customer, other than where the Products are to be fitted by WMa following delivery in which case WMa warrants that the Products will be free from material defects for a period of 12 months after the completion of the fitting. WMa shall have no liability for defects if the Customer does not notify these immediately and in writing to WMa when the defects in the Products are or should have been discovered, even if they are discovered in the warranty period. WMa shall have no liability for defects which are notified outside the warranty period. WMa shall have no liability for defects which were or should have been discovered as part of the Customer's/recipients examination of the Products upon their receipt if notification is not timely communicated to WMa. Within a period of 10 years from the date of purchase of a Product WMa warrants that it will be able to either repair a Product or supply a replacement Product with a similar function and use. The option between repair and replacement will be at WMa's discretion and subject to terms agreed with the Customer at the relevant time.
- 12.3. WMa shall be entitled to suspend its warranty obligations until such time as the Customer shall have performed all of its due payment obligations to WMa under the Contract or any other contract with the Customer.
- 12.4. WMa shall be under no liability under the above warranty in respect of any defect in Products arising from wear and tear, non-maintenance, installation or commissioning by parties other than WMa below normal standard, accidental or wilful damage, negligence, failure to follow WMa's instructions or recommendations (whether written or oral), disruption of power supply, or misuse or alteration or repair of Products without WMa's prior written approval or any of the above with respect to such items or parts of buildings (e.g. doors and windows) with which the Products are connected or interact. It is the sole responsibility of the Customer to carry out proper maintenance of the Products throughout the warranty period.
- 12.5. If WMa is requested to rectify defects on the

grounds of a complaint which was not justified, e.g. by reason of non-compliance with the installation instructions or any of the stipulations in Section 12.4, WMa shall be entitled to charge the Customer for any cost (plus a reasonable mark-up) incurred by WMa in performing such work.

## 13. Termination

- 13.1. Without prejudice to any other right or remedy under this Contract in the event of a breach of this Contract by the Customer, WMa may give 14 days notice in writing of its intention to terminate this Contract having set out the grounds for doing so. If the Customer does not take satisfactory steps to remedy the breach during the notice period then at the end of the notice period the Consultant may terminate this Contract without further notice and without further liability.
- 13.2. If the Customer makes a composition or arrangement with creditors or becomes bankrupt, or where being a company it makes proposals for a voluntary arrangement for composition of debts or scheme of arrangement, or has a provisional liquidator appointed, or a winding up order is made, or passes a resolution for voluntary winding up or any administrator or administrative or other receiver or manager is appointed, then WMa may by notice to the Customer terminate this Contract and termination shall be effective at the date of the notice.
- 13.3. In the event of a termination of this Contract then WMa shall be entitled to and shall be paid pro rata in respect of any amount of the Services provided or any Products supplied up to the date of termination and such other reasonable costs arising as a result.

## 14. Resolution of Disputes

- 14.1 The Contract is subject to English law. In the event of any dispute or difference arising between the parties under, out of or in connection with the Contract (each a "Dispute") either party may at any time refer a Dispute to adjudication. Any adjudication will be carried out pursuant to the Model Adjudication Procedures published by the Construction Industry Council current at the time of the reference.
- 14.2 The Adjudicator shall be nominated by the Royal Institute of Chartered Surveyors.
- 14.3 Either party may refer a Dispute to the English



Courts provided that proceedings in relation to any Dispute which has been referred to adjudication may not be commenced until after the party commencing such proceedings shall have received a determination from an adjudicator or the adjudication has otherwise come to an end or been abandoned.

## **15 Miscellaneous**

For the purposes of these Conditions, "Consequential Loss" shall include (but not be limited to) reference to loss of profit, loss or depletion of goodwill, loss of business or time, damage to property and all other financial loss or damage.

