

Terms and Conditions

THIS INSTALLATION AGREEMENT (the “Agreement”) is entered into between

- (1) **OnPoint Electrical Installation Ltd**, a company incorporated under the laws of England and Wales whose registered number is 12836441 and whose registered office is at Carpenter Court, 1 Maple Road, Bramhall, Stockport, Cheshire, United Kingdom, SK7 2DH (the “Supplier”); and
- (2) The Customer stated on the accepted quote (the “Customer”) each a “Party” and together the “Parties”.

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

- 1.1 Definitions:
 - 1.1.1. **Affiliate:** in relation to a body corporate, each subsidiary, parent company or company held by the same parent company
 - 1.1.2. **Agreement:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
 - 1.1.3. **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
 - 1.1.4. **Conditions:** these terms and conditions as amended from time to time in accordance with 17.8.
 - 1.1.5. **Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
 - 1.1.6. **Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.
 - 1.1.7. **Customer:** the purchaser or person or firm who purchases the Goods and/or Services from the Supplier.
 - 1.1.8. **Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements applicable and in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
 - 1.1.9. **Deliverables:** the deliverables set out in the Quote produced by the Supplier for the Customer.
 - 1.1.10. **Delivery Location:** has the meaning given in 4.2.
 - 1.1.11. **Force Majeure Event:** has the meaning given to it in 14.
 - 1.1.12. **Goods:** the goods (or any part of them) set out in the Order.
 - 1.1.13. **Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.
 - 1.1.14. **Installation Date:** the agreed date for installation.
 - 1.1.15. **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
 - 1.1.16. **Quote:** the document summarising the Deliverables agreed between the Customer and Supplier, which is signed electronically by the Customer
 - 1.1.17. **Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Quote.
 - 1.1.18. **Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer.
 - 1.1.19. **UK Data Protection Legislation:** all applicable data protection and privacy legislation applicable and in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
 - 1.20 Interpretation:
 - (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- (b) A reference to a party includes its personal representatives, subcontractors, Affiliates successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.
- (f) Should any provision of this Agreement be invalid or unenforceable, this provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.

2. Basis of Agreement

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Agreement shall come into existence (**Installation Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Agreement nor have any contractual force.
- 2.4 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 law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

- 3.1 The Goods are described in the Quote

- 3.2 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. Delivery of Goods

- 4.1 The Supplier shall deliver the Goods to the location set out in the Order Form or such other location as the parties may agree (**Delivery Location**) on the Installation Date or at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the reasonable 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. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.5 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier'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 third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If, ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of

the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

5. Title and risk

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in which case title to the Goods shall pass at the time of payment of all such sums.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in 14.2(b) to 14.2(d); and
 - (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

6. Supply of Services

- 6.1 The Supplier shall supply the Services to the Customer in accordance with the Quote in all material respects.
- 6.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quote, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 6.4 The Supplier shall provide the Services to the Customer using reasonable care and skill.

7. Customer's obligations

- 7.1 The Customer shall:
- (a) ensure that the terms of the Order Form and any further information it provides are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;
 - (c) provide the Supplier, its Affiliates, employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (e) prepare the Customer's premises for the supply of the Services;
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (g) comply with all applicable laws, including health and safety laws;
 - (h) keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
 - (i) comply with any additional obligations as set out in the Service Specification [and the Goods Specification].
- 7.2 If the Supplier's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this 7.2; and

- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8. Charges and payment

- 8.1 The price for Goods:
 - (a) shall be the price set out in the Quote or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery;
 - (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer as required; and
 - (c) shall be exclusive of VAT unless otherwise specified.
- 8.2 The charges for Services will be as listed in the Quote. If remedial work is required the price of this work will be agreed before it is undertaken and will feature in the final invoice
- 8.3 The Customer shall pay each invoice submitted by the Supplier:
 - (a) 50% of the quote value on acceptance and the balance on completion
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier
- 8.4 All amounts payable by the Customer under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**) unless stated otherwise. Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 8.5 If the Customer fails to make a payment due to the Supplier under the Agreement by the due date, then, without limiting the Supplier's remedies under 14 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this 8.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.6 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Confidentiality

- 9.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by 9.2.
- 9.2 Each party may disclose the other party's confidential information:
 - (a) to its employees, officers, representatives, Affiliates or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this 9; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.

10. Limitation of liability

- 10.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £2million. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 10.2 The restrictions on liability in this 10 apply to every liability arising under or in connection with the Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 10.4 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:
 - (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - (d) defective products under the Consumer Protection Act 1987.

10.5 [Subject to 10.4, the Supplier's total liability to the Customer shall not exceed the total contract value

10.6 This 10.6 sets out specific heads of excluded loss:

- (a) Subject to 10.4, the types of loss listed in 10.6(b) are wholly excluded by the parties.
- (b) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.

10.7 This 10 shall survive termination of the Agreement.

11. Termination

11.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement by giving the other party advance written notice.

11.2 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Agreement and (if such breach is remediable) fails to remedy that breach within five days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy.

11.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Agreement on the due date for payment; or
- (b) there is a change of Control of the Customer.

11.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Agreement or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Agreement on the due date for payment, the Customer becomes subject to any of the events listed in 11.2(b) to 11.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

12. Consequences of termination

12.1 On termination of the Agreement:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safekeeping and will not use them for any purpose not connected with this Agreement.

12.2 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

12.3 Any provision of the Agreement that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

13. Force majeure

Neither party shall be in breach of the Agreement nor liable for delay in performing or failure to perform, any of its obligations under the Agreement if such delay or failure result from unforeseeable events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four weeks, the party not

affected may terminate the Agreement by giving fourteen days' written notice to the affected party.

14. General

14.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement.

14.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (i) sent by email to the address specified in the Order Form.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;
 - (iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this 15.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15. Severance

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement. If any provision or part provision of the Agreement is deemed deleted under this clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

16. Waiver.

A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17. No partnership or agency

Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party

18. Entire agreement.

- (d) The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (e) Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Agreement.
- (f) Nothing in this clause shall limit or exclude any liability for fraud.

19. Third party rights

19.1 Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

19.2 The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.

20. Variation

Except as set out in these Conditions, no variation of the Agreement shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

21. Governing law

The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

22. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.