



## TERMS & CONDITIONS

### 1. Definitions

In these terms and conditions, the following expressions shall (where the context so admits) have the following meanings:

“**Company**” shall mean [Scott ELM Limited (06219110)] having its Registered Office Church Gresley Industrial Estate, Swadlincote, Derbyshire, DE11 9NR.

“**Extended Group**” means (i) the group of companies to which Scott ELM Limited (06219110) belongs and (ii) the group of companies to which Scott Group Holdings Limited (SC262153) is the parent company

“**Contract**” shall mean the contract between the Company and the Customer entered into subject to these conditions comprising the Order by the Customer, and the verbal or written acceptance thereof by a person authorised to sign on behalf of the Company, in accordance with condition 3 below. For the avoidance of doubt, in the event that the Customer submits an Order to the Company which contains the Customer’s terms and conditions, those terms and conditions shall not form part of the Contract, and the Customer shall be deemed to consent to contracting exclusively on the Company’s terms and conditions unless the Customer advises the Company in writing immediately on receipt of the Company’s written acceptance of the Order to the contrary.

“**Customer**” shall mean the company, firm or person with whom the Company is contracting.

“**Delivery**” shall be the date on which the goods are placed in the custody and control of the Customer.

“**Goods**” means the goods which were ordered from the Company by the Customer under the Contract.

“**Order**” means an order placed with the Company by the Customer, either verbally or in writing.

### 2. Interpretation

2.1 The headings in this Agreement are inserted for convenience only and shall not affect its construction.

2.2 Unless the context otherwise requires words denoting the singular shall include the plural and vice versa, references to any gender shall include all other genders and references to persons shall include bodies corporate, unincorporated associations and partnerships in each case whether or not having a separate legal personality. References to the word “include” or “including” are to be construed without limitation.

### 3. Acceptance of Order

3.1 When an Order is placed with the Company by the Customer, it is entirely at the discretion of the Company as to whether the Company wishes to accept, or part accept, or refuse to accept the Order. If the Order is accepted, it shall only be accepted upon these conditions (hereinafter called the “Conditions”).

3.2 Each Order that is accepted by a person authorised to sign on behalf of the Company shall constitute an individually legally binding Contract between the Company and the Customer, and the Contract cannot be terminated or amended by the Customer without the written consent of a person authorised to sign on behalf of the Company, and on such terms as the Company consider to be equitable in the circumstances.

### 4. Application of Conditions

The Conditions shall override any contrary different or additional terms or conditions (if any) contained in or referred to in any document or correspondence from the Customer and no addition, alteration or substitution of the Conditions will bind the Company or form part of any Contract unless they are expressly accepted in writing by a person authorised to sign on the Company’s behalf. For the avoidance of doubt, should the Customer not wish the Order, if accepted by the Company, to be subject to the Conditions, they are required to advise the Company in writing immediately on receipt of the Company’s written acceptance of the Order.

### 5. Pre-order Information

5.1 Prior to any Order being placed with the Company, the Company shall provide the Customer if requested by the Customer to do so with recommendations as to the nature of the Goods that could potentially meet the requirements of the Customer. The Company shall in all cases provide to the Customer with either a verbal or written quotation of the cost to the Customer of the Company providing the Goods, the approximate date on which the Goods would be available to the Customer, and the cost of delivery.

5.2 For the avoidance of doubt, the recommendations and/or quotations provided by the Company under Condition 5.1 (“the Pre-Order Information”) above are for demonstrative purposes only and do not constitute an Offer by the Company to the Customer, nor shall they form part of the Contract (except to the extent otherwise expressly provided in these Conditions). Any quotation provided by the Company is given on the basis that (1) the quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it and (2) that no contract shall come into existence until the Company has accepted the Order placed by the Customer.

5.3 The specification of goods ordered by the Customer is the responsibility of the Customer and the Company will have no liability as to the accuracy or sufficiency thereof.

### 6. Implementation of Contract

The Company shall be entitled to arrange for a third party to carry out any of their obligations under the Contract on their behalf.

### 7. Price

The price, exclusive of VAT that the Customer will require to pay for the Goods shall be the price detailed in the Pre Order Information, unless the Customer is informed in writing of a change in the price prior to the Order being accepted (hereinafter called the “Price”). The Price does not include the costs of packaging, delivery and insurance of the Goods in transit unless specifically agreed in writing between the Customer and the Company.

### 8. No Liability

8.1 In no circumstances shall the Company be liable to the Customer in contract, delict (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof:- for any increased costs or expenses for any loss of profit, business, contracts, revenues or anticipated savings or for any special indirect or consequential damage of any nature whatsoever arising directly or indirectly out of the provision by the Company of the Goods or any error or defect therein, or of the performance, non-performance or delayed performance by the Company of the Contract.

8.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

8.2 Nothing in these conditions excludes or limits the liability of the Company:

- for death or personal injury caused by the Company’s negligence; or
- for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- for fraud or fraudulent misrepresentation.

### 9. Suitability of Goods

Prior to submitting an Order, the Customer shall require to satisfy themselves that the Goods are reasonably fit for the purpose for which they are intended. The Customer cannot rely on the Pre-Order Information in this respect, and the Company provides no warranty or guarantee as to the

fitness of the Goods for any particular purpose. The Company shall have no liability whatsoever for any failure by the Customer to ensure that the Goods are suitable for the purpose for which they were intended. Size and measurement of the Goods is approximate only and a tolerance of fifteen per centum greater or lesser is permitted unless specifically agreed to the contrary.

### 10. Health and Safety

The Customer shall be responsible for the compliance of all persons handling or otherwise using the Goods or having access to the Goods whilst in the Customer’s control and custody with any warnings, suggestions or instructions relevant to the Goods (“Instructions For Use”) where these are provided by the Company. The Company shall have no liability whatsoever for any death or personal injury caused by the Customer’s negligence or failure in complying with the Instructions for Use.

### 11. Licences, etc

The Customer shall require to satisfy themselves that all appropriate consents, permissions, licences, etc have been obtained to use the Goods in the manner that is proposed by them, and that the use of the Goods will not otherwise breach any law binding on them. The Company shall have no liability whatsoever for any failure by the Customer to comply with their obligations under this Condition.

### 12. Interest on Price

The Customer shall be required to pay the Price within 30 days from the date of delivery, or on such other date as is detailed in the Pre-Order Information. No payment shall be deemed to have been received until the Company has received cleared funds. In the event that the Customer does not make payment of the Price timeously, then the Company shall be entitled to charge interest at the rate of 8% per annum above the base rate of The Royal Bank of Scotland on the Price.

### 13. Delivery

13.1 Except where agreed between the Company and the Customer, delivery time shall not be deemed to be of the essence of the Contract. The estimated date of delivery shall be the date detailed in the Pre-Order Information, unless the Customer is informed in writing of a change in the date. (hereinafter called the “Delivery Date”). The Company shall use all reasonable endeavours to comply with the Delivery Date, and shall exercise reasonable endeavours to notify the Customer of any change in the Delivery

Date, and to provide a revised estimate Delivery Date to the Customer. Any onward notification of such delay to customers of the Customer shall be the sole responsibility of the Customer. The Company shall have no liability whatsoever for any failure by the Customer to comply with their obligations under this Condition 13.

13.2 The Company accept no responsibility or liability financial or otherwise for non-compliance with the Delivery Date. In particular, for the avoidance of doubt and without limitation to the generality of the foregoing, the Company shall not be liable to reimburse the Customer in respect of any delayed payments or other penalties for which the Customer may become liable to any customer of the Customer as a result of the failure by the Company to comply with the Delivery Date whether or not the Company is aware of the Customer’s potential liability to pay the same.

13.3 It will be at the discretion of the Customer as to whether they wish to collect the Goods from the Company, or whether they wish the goods to be delivered to them by the Company. In the event that the Customer collects the Goods, risk of loss, damage or deterioration of the Goods shall pass to the Customer when they are taken from the custody and control of the Company, which expression will include the point of loading if the Goods are loaded by the Customer. In the event that the Company delivers the Goods to the Customer, the risk of loss, damage or deterioration of goods shall pass to the Customer when the Goods are delivered to the custody and control of the Customer. For the avoidance of doubt, in the event that the Goods are delivered by the Company to the Customer, the Customer shall be responsible for the cost of packaging, delivery, and insurance of the Goods in transit. The sum that the Customer will require to pay for Delivery of the Goods shall be the sum detailed in the Pre-Order Information, unless the Customer is informed in writing of a change in the sum prior to the Order being accepted.

13.4 In the event that the Company delivers the Goods to the Customer, custody and control of the Goods will be deemed to pass to the Customer immediately on the Goods entering the Customer’s premises.

13.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

- risk in the Goods shall pass to the Customer (including for loss or damage howsoever caused);
- the Goods shall be deemed to have been delivered; and
- the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

13.6 The Customer has a period of 7 days to provide written notice to the Company of any defects in the Goods failing which the Customer will be deemed to have accepted the Goods.

13.7 On receipt of such notice the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, return the Goods or the part of such Goods which is defective to the Company.

13.8 For the avoidance of doubt, notwithstanding the provisions of Condition 13 hereof relating to the passing of risk, ownership of and title to the Goods shall remain with the Company and shall not pass to the Customer until the Company has received in full (in cash or cleared funds), all sums due to it in respect of (a) the Goods; and (b) all other sums which are or which become due to the Company from the Customer on any account, notwithstanding that delivery of the Goods to the Customer or to any independent carrier or any third party has been made. In the event of non-payment of the Price by the Customer, without prejudice to any other remedy open to the Company, the Company shall be entitled to enter upon the premises of the Customer to recover the Goods.

### 14. Customer’s Indemnity

The Customer shall indemnify the Company against any claims, actions, damages, proceedings, or any other liability whatsoever arising as a result of the failure of the Customer and/or their employees, sub-contractors, agents, and assignees whomsoever to comply with their obligations under Conditions 9, 10, 11 and 13 hereof, including, but not restricted to liability in respect of death or personal injury, except where the Customer can show that the failure was not as a result of their negligence or default. The Customer shall maintain insurance with a reputable insurance company at an adequate level of cover to protect against the risks inherent in this Condition 14 and Conditions 9, 10, 11 and 13 and shall provide the Company with a copy of the policy or policies of insurance together with evidence of the most recent premium having been paid if requested to do so by the Company.

### 15. Limitation of Liability

The Company shall not be liable for any breaches of the terms of the Contract or for loss, delay, expenses, damages or other casualty caused by their being prevented, hindered or delayed from complying with the terms of the Contract through any circumstances beyond their reasonable control including, but not restricted to, fire, explosion, war, rebellion, sabotage, strikes or other industrial action or dispute, lock outs, accidents, reductions in or unavailability or power, breakdown of plant or machinery or shortage or unavailability of materials and/or the Goods from normal sources or routes of supply, Acts of Government, default of sub-contractors, employees, agents or any circumstances beyond the reasonable control of the routes of supply, Acts of Government, default of sub-contractors, employees, agents or any circumstances beyond the



reasonable control of the Company, provided that the Company has given to the Customer prompt notice in writing of the occurrence of any such event or cause and of its discontinuance.

**16. Unenforceable Conditions**

If any of the Conditions are declared by any judicial or other competent authority to be void, illegal or otherwise unenforceable the remaining provisions of these Conditions shall remain in full force and effect unless the Company at the Company's discretion decides that the effect of such declaration is to defeat the original intention of the parties in which event the Company shall be entitled to terminate the Contract by 30 day's notice to the Customer.

**17. Whole Agreement**

The Customer acknowledges that the Conditions, together with the other terms of the Contract, contain the whole agreement between the parties, and supersede any previous agreement or understanding between the parties in respect of the subject matter of the Contract.

**18. Failure to Enforce**

The failure by the Company to enforce at any time for any period any one or more of the terms of the Conditions and/or other terms of the Contract shall not be a waiver of them or of the right at any time subsequently to enforce all the terms of the Conditions and/or other terms of the Contract.

**19. Assignment**

The Customer shall not be entitled to assign any of their rights under the Contract to a third party save with the prior consent of the Company.

**20. Notices**

Any notice to be given hereunder shall be sent by First Class mail to the address of the Registered Office of the Company or the Customer (as appropriate) or such other addresses as the parties may specify.

**21. Compliance**

The Company shall be entitled to terminate this Contract in respect of any failure by the Customer to comply with the terms of the Contract. In such circumstances, the Company shall be excused from further performance, and the Customer shall require to make payment of all sums due to the date

of said termination, including all consequential losses incurred by the Company, and the cost of work carried out by the Company under the Contract to that date. Termination of the Contract under this Condition 21 shall not be deemed to constitute termination of those provisions which envisage continued

performance notwithstanding termination of the remainder of the Contract.

**22. Infringement of Intellectual Property Rights**

22.1 The Company shall have no liability to the Customer, except as provided for in this Condition 22, in the event that the Goods infringe any intellectual property rights of a third party (including without limitation by reason of their possession, sale or use, whether alone or in association or combination with any other goods); the Company gives no warranty that the Goods will not infringe as aforesaid, and all conditions, warranties, stipulations or other statements whatsoever relating to such infringement or alleged infringement (if any), whether express or implied, by statute or at common law or otherwise howsoever, are hereby excluded.

22.2 In the event that any claim is made against the Customer for infringement of Intellectual Property Rights arising directly or indirectly from the use or sale by the Customer of the Goods, the Company shall at its sole discretion and at its own expense be entitled to conduct any ensuing litigation and all negotiations for the settlement of the claim. The Company will be entitled as its sole discretion to bear the costs of any payment (either by way of a lump sum or a continuing royalty payment) made in settlement, or as a result of an award in a judgement against the Company in the event of liquidation.

22.3 The Company shall only consider exercising their right under Condition 22.2 in the event that the Customer gives to the Company the earliest possible notice in writing of any such claim being made or action threatened or brought against it. The Customer shall make no admission of liability or take any other action in connection therewith, shall permit the Company to conduct the claim pursuant to Condition 22.2, and shall (at the Company's expense) give all reasonable information co-operation and assistance to the Company (including without limitation lending its name to the proceedings) in relation to the conduct of the claim. In addition, if it is made a condition of any settlement made by the Company, or judgement awarded against the Company pursuant to condition 22.2 the Customer shall return or destroy, as applicable, all infringing goods still under its control subject to a refund by the Company of the purchase price less 20% for each completed year or a proportion thereof for any part year.

22.4 The provisions of condition 22.3 shall not apply to any infringement caused by the Company having followed a design or instruction furnished or given to the Company by the Customer, nor to any use of the Goods by the Customer in a manner or for a purpose which shall have been specifically prohibited in writing by the Company, nor to any infringement which is due to the use of such goods by the Customer in association or combination with any other product, nor where the Customer has failed in their obligations under Condition 11 hereof.

22.5 Any design or instruction furnished or given by the Customer shall not be such as will cause the Company to infringe any intellectual property rights.

22.6 For the purposes of this Condition 22, the capitalised term "Intellectual Property Rights" means patents, registered designs, unregistered designs, registered trademarks, and copyright only, having effect in the United Kingdom.

22.7 The foregoing states the Company's entire liability to the Customer and the Customer's sole and exclusive remedies against the Company in connection with claims based on or resulting from the infringement of intellectual property rights, of any kind whatsoever, of any third parties.

**23. Unfair Contract Terms Act 1977**

If, and to the extent that s.6 and/or s. 7(3A) of the Unfair Contract Terms Act 1977 applies to this Agreement shall operate or be construed to operate so as to exclude or restrict liability of the Company for breach of Condition 22 above, or for breach of the applicable warranties as to title and quiet possession implied into this agreement by s.12(1) of the Sale of Goods Act 1979, or S.2(1) of the Supply of Goods and Services Act 1982, whichever Act is applicable.

**24. Incidental Errors**

The Company reserves the right to amend any incidental error or omission in the Pre-Order Information and/or the Contract.

**25. Governing Law**

This Agreement shall be governed by the Law of Scotland and the Customer submits to the exclusive jurisdiction of the Scottish Courts.

**26. Set-off**

To the extent that any amounts are payable by the Company or any member of the Extended Group to the Customer under any agreement or otherwise, the Company or any member of the Extended Group may at any time or times, without notice to the Customer set-off any such liability of the Company or any member of the Extended Group to the Customer against any liability (including invoices to be raised) of the Customer to the Company or any member of the Extended Group, whether any such liability is present or future (whenever arising), liquidated or unliquidated, under Contract or not. Any exercise of the Company or any member of the Extended Group of its rights under this Condition shall be without prejudice to any other rights or remedies available to it under Contract or otherwise.

**Terms & Conditions Acknowledgement**

Company Name .....

Signed: .....

Print Name: .....

Position Held: .....

Date: .....