

ACCESS & SECURITY SOLUTIONS LTD

TERMS AND CONDITIONS

1. **DEFINITIONS**

The following words and phrases, used in these Conditions, shall have the meanings given below:
Access & Security Solutions Ltd (Access) – ‘Cheshire Gates’ trading as Access & Security Solutions Ltd

Purchaser -the person, company or organisation with which Access is in contract for the execution of the Works and all those for which the Purchaser is responsible or over which it has control.

Works -the works expressly described in Cheshire Gates quotation or Confirmation Order and including any variations made to those works in accordance with these Conditions.

Period -the period for the execution of the Works described in the quotation and including any changes to that period made in accordance with these Conditions.

Defects Liability -the period following completion of the Works described in the quotation in which Access will repair the Works (except for Induction Loops) at no cost to the Purchaser with the exception that damage or fault caused by misuse or physical abuse will be repaired only at the Purchaser’s cost.

Confirmation Order -a formal confirmation issued by Cheshire Gates to the Purchaser and detailing any changes agreed between these parties from the original Cheshire Gates quotation, where such have occurred.

Contract Price -the price to be paid to Cheshire Gates by the Purchaser and stated in ATG’s quotation or Confirmation Order or as calculated at the fees, rates or prices stated therein.
2. **FORMATION OF CONTRACT**

No Contract shall come into effect until Cheshire Gates has accepted in writing the Purchaser’s Order or, where the Purchaser has not issued an Order following agreement between the parties, Cheshire Gates has issued a Confirmation Order and its receipt and agreement thereto has been acknowledged in writing by the Purchaser.
3. **INFORMATION**

The Purchaser shall supply Cheshire Gates with all information, drawings, specifications of build and other documentation in the power or possession of the Purchaser as Cheshire Gates may reasonably require enabling Cheshire Gates to fulfill its obligations under its quotation, Confirmation Order, and these Conditions.
4. **COPYRIGHT**

Cheshire Gates owns the copyright in information, drawings, specifications and other documentation prepared by it for the execution of the Works. The Purchaser shall not without the previous consent of Cheshire Gates disclose to a third party or use the said documentation for any purpose than the execution of the Works or the operation of the goods supplied.
5. **PERIOD**
 - i Any period of time stated by Cheshire Gates for delivery or completion of the Works shall commence from the commencement date stated on the Confirmation Order or quotation. Such period shall, however, not commence until:
 - i) after receipt of final information provided by the Purchaser, and
 - ii) after final approval by the Purchaser of the complete package of information required for the execution of the Works supplied by Cheshire Gates.
 - ii As regards the Period, shall be granted by the Purchaser such extension of time as is reasonable for any delay caused by others, or outside the control of Cheshire Gates, including but not restricted to force majeure, adverse weather conditions, civil commotion, strikes or other industrial disputes, fuel shortages and any act of default of the Purchaser or others employed by him that affects the Works.
 - iii In the event that the Works cannot be commenced or completed within the Period, or goods and materials supplied by Cheshire Gates cannot be delivered, or not collected by the Purchaser on the dates stated in Cheshire Gates quotation or Confirmation Order then the Purchaser shall be liable to Cheshire Gates for any consequential costs incurred such as, but not restricted to, storage, protection, transport, standing time. The amount of such incurred costs will be added to the Contract Price and paid to Cheshire Gates by the Purchaser.
6. **FREE ISSUE MATERIALS**

If the Purchaser requires to in-corporate materials, fittings or instruments to be supplied free by the Purchaser, then such free issue items:
Shall be provided at the locations and at the quantities and times required by
Shall be deemed to be in good condition only if confirmed as such, in writing, by Cheshire Gates, following receipt; there-after they will be the responsibility of as regards loss or damages (Subject to 7 below).
Shall be deemed to be fit for the intended purposes; in the event that they are not then the Purchaser will be liable for all costs associated with replacement including Cheshire Gates costs.
7. **RISK OF LOSS OR DAMAGE**
 - i The risk of loss or damage to all materials and goods supplied by Cheshire Gates shall pass to the Purchaser once such items have been delivered to their destination as required by the Purchaser or when collected from Cheshire Gates by the Purchaser.
 - ii The risk of loss or damage to materials and goods installed by Cheshire Gates at the site of the Works shall pass to the Purchaser immediately following whole or partial installation.
8. **TRANSFER OF TITLE**

Title in any materials and goods supplied by Cheshire Gates shall not pass to the Purchaser, notwithstanding that they may have been wholly or partially installed as part of the Works, unless and until the Purchaser has discharged all outstanding indebtedness to Cheshire Gates whatsoever.
9. **INSURANCE AND LIABILITY**

Cheshire Gates shall indemnify the Purchaser against any liability for injury or damage to any person or any property when caused by its negligence or that of its agents or servants, subject to the following restrictions.

 - i Cheshire Gates’s liability for damage shall not exceed £5,000,000 for any one event, or £5,000,000 for the aggregate of all events related to, or arising from the same Works.
 - ii Cheshire Gates shall not be liable for indirect or consequential loss arising from such injury or damage.

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10. FLUCTUATIONS

Unless otherwise stated all fees, rates or prices quoted by Cheshire Gates are based on prices and costs ruling at the date of the quotation or Confirmation Order, whichever is the later. In the event of any of the said prices and costs increasing before completion of the Works then Cheshire Gates shall be entitled to adjust the fees, rates or prices to be paid by the Purchaser by a reasonable amount in respect of such increase, such adjustment to include an addition for profit and overhead.

11. PURCHASER'S FACILITIES AND ATTENDANCE

1. The Purchaser shall be responsible for unloading, distribution, storage and hoisting of all goods and materials at the site of the Works whether delivered by Cheshire Gates or collected by the Purchaser.
2. The Purchaser shall provide at the site of the Works, free to Cheshire Gates, the following:

water, lighting, power, use of standing scaffold and scaffold required exclusively for the Works, accommodation, toilets and welfare facilities as are required by any legislation, Health & Safety requirements, or as reasonably required by Cheshire Gates.

all necessary builders' work in connection with the Works, all cleaning, removal of rubbish and protection of the Works.

- i) free and uninterrupted access to the site of the Works at all reasonable times as required by Cheshire Gates.
 - ii) indemnification of Cheshire Gates against all claims, loss, damage, costs or expenses incurred by Cheshire Gates arising out of any negligence or other act by the Purchaser affecting Cheshire Gates's statutory or common laws duties owed to its employers, agents or servants in respect of Health & Safety at Work or any other matter.
 - iii) road closures, traffic control system, barriers and the like
 - iv) connections to permanent drains
3. The Contract Price assumes that the ground within which the Works are to be installed on site is soil or other similar material that will enable excavation by hand tools.

12. WORKING HOURS

Unless otherwise specifically noted in a Quotation or Confirmation Order all prices offered by Cheshire Gates, and all programme periods, are based on working hours being between 8.30am and 5.00pm Mondays to Fridays only (excluding Bank or statutory holidays). In the event that Cheshire Gates works outside those hours, by reason of agreement to a request in writing, or as a necessary consequence of any act or default by the Purchaser, or of any person, firm or organisation not employed by Cheshire Gates, then the additional costs thereby incurred by Cheshire Gates shall be added to the Contract Price and paid to Cheshire Gates by the Purchaser.

13. VARIATIONS

The Purchaser may without invalidating the contract order an addition to, or omission from, or otherwise change, the Works, or may order a change in the sequence, or period of the Works. Any such variation shall be valued by Cheshire Gates on a fair and reasonable basis and the amount thereof shall be added to the Contract Price and paid to Cheshire Gates by the Purchaser. Wherever possible the value of variations shall be agreed in writing between Cheshire Gates and the Purchaser prior to the execution of the variation by Cheshire Gates.

Cheshire Gates shall have the right to refuse to accept a variation if it significantly alters the character, or the period for performance, of the Works.

14. LOSS AND/OR EXPENSE

If Cheshire Gates incurs any loss and/or expense in the execution of the Works or any part thereof due to any act, omission, delay or disturbance caused by the Purchaser the amount of such loss and/or expense shall be added to the Contract Price and paid to Cheshire Gates by the Purchaser.

15. PAYMENT

Payment of amounts within the periods stated here or in Cheshire Gates's quotation or Confirmation Order, is of the essence.

Unless otherwise stated in Cheshire Gates's quotation or Confirmation Order :

- i) a) the full value of all goods, materials, labour installation, testing, commissioning expended on the Works by Cheshire Gates will be invoiced each month to the Purchaser, or;
 - b) i) 30% of the Contract Price will be invoiced upon receipt of a direction by the Purchaser to proceed with the Works, and
 - ii) a further 50% of the Contract Price (and any Variation) will be invoiced upon completion of testing, at Cheshire Gates premises, of pre-assembled goods forming part of the Works; provided that the tests are to Cheshire Gates satisfaction and it so certifies and that the Purchaser is given not less than three working days notice in writing, of the time when the tests will be carried out.
 - iii) the residue of the Contract Price and Variations will be invoiced immediately upon completion of the Works, or part thereof, at site (Completion to
 - iv) **Cheshire Gates**, not later than 7 days after the date of an invoice, the full value of that invoice, and
- iii) if the Purchaser fails to pay Cheshire Gates invoice in accordance with ii) herein then Cheshire Gates will be entitled to charge interest at 2% per month on any amount outstanding. The amount of any such interest shall be a debt due to Cheshire Gates by the Purchaser and shall be added to the Contract Price, and further
- iv) a) if the Purchaser fails to make payment in accordance with these Conditions and such failure should continue for two working days after a notice in writing from Cheshire Gates then without prejudice to any other rights or remedies open to Cheshire Gates, Cheshire Gates may at its absolute discretion immediately suspend the execution of any outstanding work until the Purchaser has made good its default in payment to Cheshire Gates.
 - b) or, alternatively Cheshire Gates shall return to site and remove any items supplied by it which are affixed with bolts or similar connections (and the Purchaser is deemed to have given or reserved rights of access to the site for Cheshire Gates for this purpose)
 - c) in either event any additional costs which Cheshire Gates may incur as a result of such suspension or action shall be added to the Contract Price and paid to Cheshire Gates by the Purchaser, and Cheshire Gates shall be granted an extension of time for the full period of consequent delay.
- v) no bonds, retentions or discounts shall apply to the contract between Cheshire Gates and the Purchaser

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16. **SUB-CONTRACTING OF THE WORKS**
shall have the right to sub-let the whole or any part of the Works without reference to the Purchaser; no such sub-letting shall, however, reduce or otherwise vary Cheshire Gates obligations to the Purchaser.
17. **VALUED ADDED TAX**
All prices, rates, fees and costs quoted by Cheshire Gates are exclusive of Value Added Tax (VAT); all such prices etc to be paid by the Purchaser to Cheshire Gates will be increased by the addition of VAT calculated at the appropriate rate.
18. **HIRE OF LABOUR**
Where the services provided by Cheshire Gates comprise the supply of labour to the Purchaser, whether at the Purchaser's premises or at any other place of work, all necessary instructions, allocation of work, procurement of goods and materials, programming and supervision to effect the Works will be the sole responsibility of the Purchaser unless expressly stated otherwise in Cheshire Gates quotation or Confirmation Order.
19. **EMPLOYEES**
The Purchaser will not engage or employ any person provided by Cheshire Gates to carry out services for the Purchaser within three months from the date on which such services were last provided by such a person on behalf of Cheshire Gates. In the event that a person is employed by the Purchaser contrary to these provisions, the Purchaser will pay to Cheshire Gates, by way of compensation, a sum equal to one eighth of that person's gross earnings over the immediately preceding twelve month period.
20. **TESTING AND COMMISSIONING**
Where testing and/or commissioning forms part of the Works and there is an express requirement that such tasks and/or commissioning are to be witnessed by the Purchaser, Cheshire Gates will give not less than 2 working days notice in writing of its intention to carry out such work and the Purchaser shall arrange to witness that work.
If the Purchaser fails to witness any test and/or commissioning after receiving a notice, as above, then Cheshire Gates may carry out such testing and/or commissioning at the intended time and all such work shall be deemed to have been done in compliance with the Contract.
If the Purchaser fails to attend, following notice, then Cheshire Gates may, at its absolute discretion, defer the execution of the testing and/or commissioning until the Purchaser does attend; in such an event Cheshire Gates shall be granted an extension of time for the full period of the delay and the related and abortive costs arising therefore shall be added to the Contract Price and paid to Cheshire Gates by the Purchaser.
21. **TERMINATION**
If the Purchaser shall be in breach of any of these Conditions and such breach shall continue for two working dates after Cheshire Gates has given written notice thereof to the Purchaser, then without prejudice to any other rights and remedies which may possess Cheshire Gates may terminate the Works forthwith.
If the Purchaser, having been given notice of breach which it has remedied before Cheshire Gates has terminated the Works, commits any other breach then Cheshire Gates may terminate the Works forthwith without giving further notice. Upon such termination as aforesaid the Purchaser will be liable to Cheshire Gates for any loss or damage suffered by Cheshire Gates in connection therewith, including the overhead and profit contribution due to Cheshire Gates within the price of any incomplete part of the Works.
22. **GUARANTEE AND DEFECTS LIABILITY**
a) Without prejudice to the Purchaser's statutory rights Cheshire Gates will pass to the Purchaser the benefit of any guarantee Cheshire Gates has received in respect of materials and goods supplied by Cheshire Gates. Cheshire Gates further undertakes to repair or replace (that choice being at the absolute discretion of Cheshire Gates) free of charge any defective materials or work where the defect occurs within the 12 months period following completion of the Works; or if the works are completed in sections the completion of the relevant section; except for this undertaking Cheshire Gates shall have no liability for any loss whether direct, indirect or consequential.
b) Where beneficial use of the Works, or part thereof, is taken by the Purchaser, the first date of that use will be the start of the Defects Liability Period.
c) Where the work performed by Cheshire Gates amounts to repair or refurbishment of items provided by the Purchaser Cheshire Gates's liability under 24 (1) shall apply only to those parts replaced, or work done, by Cheshire Gates.
d) Where works are carried out on existing brickwork, stonework and steelwork, it is the responsibility of the Purchaser to have the relevant works checked for defects. Cheshire Gates accepts no liability for the failure of these products.
23. **ADJUDICATION**
In the event of a dispute between Cheshire Gates and the Purchaser concerning the whole or part of the Works that falls within the scope of the Adjudication provisions of the Housing Grants Construction & Regeneration Act and one of the parties seek resolution through those provisions then:
a. the Adjudicator may not require either party to pay or make contribution to the legal or any other costs of the party arising in the adjudication.
b. the Adjudicator shall require that his costs, fees and expenses are divided equally and paid half each by the parties, irrespective of his findings as to liability or otherwise as regards the dispute.
24. **ARBITRATION**
If at any time any question, dispute or difference whatsoever shall arise between Cheshire Gates and the Purchaser, in relation to, or in connection with the contract, either may give to the other notice in writing of the existence of such question, dispute, or difference, and the same shall be referred to the arbitration of a person to be mutually agreed upon, or failing agreement within thirty days of receipt of such notice, of some person appointed by the President for the time being of the Institution of Electrical Engineers.
25. **PROPER LAW**

All Contracts pursuant of these Conditions shall be governed by and construed in accordance with the general laws of England and Wales