

These are the terms and conditions (**Terms**) on which Eco Environmental Services Limited, registered under company number 03674052 (**Eco**), shall design, provide and install bird deterrent systems to the Customer (**Services**). We reserve the right to amend these Terms at any time in accordance with changes in the law or to improve the Services. No other person except for a director of Eco may vary these Terms at your request or enter into a collateral contract or warranty in respect of a Main Contract (as defined below).

1. Interpretation

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

1.1 Definitions:

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning given in clause 2

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Customer: the person or firm who purchases Services from Eco as indicated on the Order.

Data Protection Legislation: all applicable data protection and privacy legislation 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.

Goods: the goods (or any part of them) as set out in the Order.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, 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.

Main Contract: a construction contract that falls under the provisions of Part II of the Housing Grants, Construction and Regeneration Act 1996, including as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009 (altogether the **Construction Legislation**).

Order: the Customer's order for the Services as set out in the quotation provided by Eco (such quotation to include the price and specification for the Goods), or the Services set out in the form provided with these Terms, as the case may be.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) 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.
- (c) 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.
- (d) A reference to **writing or written** includes fax and email.
- (e) All notices under these Terms must be directed to Eco's contact details in the header.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Terms. The Order shall only be deemed to be accepted when Eco issues written acceptance of the Order at which point and on which date a legally binding contract (**Contract**) shall come into existence (**Commencement Date**).

2.2 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, and the Customer acknowledges and accepts on the Commencement Date and throughout the duration of the Contract that:

- (a) The Services procured from Eco are done so in the course of a business;
- (b) All prices set out in the Order will be without retention or Main Contractors Discount (MCD) under a Main Contract; and
- (c) The Services are not a "*construction operation*" as defined under the Construction Legislation.

2.3 Any quotation given by Eco shall not constitute an offer, and is only valid for a period of 60 days from its date of issue. Any samples, drawings, descriptive matter or advertising issued by Eco, and any descriptions or illustrations provided by Eco, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

3. Goods

3.1 To the extent that the Goods are to be manufactured in accordance with any specification supplied by the Customer, the Customer shall indemnify Eco against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Eco arising out of or in connection with any claim made against Eco for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Eco's use such specification. This clause 3.1 shall survive termination of the Contract.

3.2 Eco reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirement, and Eco shall notify the Customer in any such event.

4. Delivery of Goods

4.1 Eco shall deliver the Goods to the location set out in the Order at any time after Eco notifies the Customer that the Goods are ready for delivery and/or installation. Delivery of the Goods shall be completed:

- (a) on the completion of unloading of the Goods; or
- (b) on the completion of the installation of the Goods,
(whichever is the latter shall be deemed the **Delivery**).

4.2 Any dates quoted for Delivery of the Goods are approximate only, and the time of Delivery is not of the essence. Eco 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 Eco with adequate delivery instructions or any other instructions that are relevant to the supply and/or installation of the Goods.



- 4.3 Eco may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5. Quality of Goods**
- 5.1 Eco warrants that on Delivery, the Goods shall conform in all material respects with the specification set out in the Order and be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, Eco shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
- the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5; and
 - Eco is given a reasonable opportunity of examining such Goods.
- 5.3 Eco shall not be liable for the Goods' failure to comply with the warranty in clause 5 if:
- the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - the defect arises because the Customer failed to follow Eco's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - the defect arises as a result of Eco following any drawing, design or specification supplied by the Customer;
 - the Customer alters or repairs such Goods without the written consent of Eco;
 - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - the Goods differ from the specification in the Order as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, Eco shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Eco.
- 6. Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on completion of Delivery.
- 6.2 Title to the Goods shall not pass to the Customer until Eco receives payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Eco's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Eco's behalf from the date of Delivery;
 - notify Eco immediately if it becomes subject to any of the events listed in clause 13.2(a) to clause 13.2(c); and
 - give Eco such information relating to the Goods as Eco may require from time to time.
- 6.4 Without prejudice to any other right of Eco under these Terms, Eco shall, in respect of any debt due under the Contract, hold a general lien over any of the Customer's property in Eco's possession and any other materials required in the provision of the Services until such debts are paid in full.
- 7. Customer's obligations**
- 7.1 The Customer shall:
- ensure that the terms of the Order including any specification provided in the Order are complete and accurate;
 - co-operate with Eco in all matters relating to the Services;
 - provide Eco, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by Eco to provide the Services;
 - provide Eco with such information and materials as Eco may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - prepare the Customer's premises for the supply of the Services including the provision of scaffolding where appropriate at the Customer's cost;
 - 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;
 - comply with all Data Protection Legislation, including health and safety laws;
 - keep all materials, equipment, documents and other property of Eco (**Eco Materials**) at the Customer's premises in safe custody at its own risk, maintain Eco Materials in good condition until returned to Eco, and not dispose of or use Eco Materials other than in accordance with Eco's written instructions or authorisation; and
 - comply with any additional obligations as set out in the Order.
- 7.2 If Eco's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- without limiting or affecting any other right or remedy available to it, Eco 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 Eco's performance of any of its obligations;
 - Eco shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Eco's failure or delay to perform any of its obligations as set out in this clause 7.2; and
 - the Customer shall reimburse Eco on written demand for any costs or losses sustained or incurred by Eco arising directly or indirectly from the Customer Default.
- 7.3 On Delivery of the Goods, the Customer acknowledges and accepts that Eco has afforded the Customer reasonable opportunity to inspect the Goods, including all information with respect to the design, manufacture and supply of the Goods, prior to Delivery, with regard to health and safety whether or not that information has been requested by the Customer, and the Customer warrants that the location of Delivery as set out in the Order complies with all relevant health and safety law.
- 8. Charges and payment**
- 8.1 The Customer shall pay each invoice submitted by Eco:



- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by Eco and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by Eco, and time for payment shall be of the essence of the Contract.
- 8.2 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Eco to the Customer, the Customer shall, on receipt of a valid VAT invoice from Eco, pay to Eco 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.
- 8.3 If the Customer fails to make a payment due to Eco under the Contract by the due date, then, without limiting Eco's remedies under clause 13 (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 clause 8.3 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.
- 8.4 All amounts due under the Contract 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. Intellectual property rights**
- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Eco.
- 9.2 Eco grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify any materials relating to the Goods or Services as provided by Eco to the Customer (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Goods in its business.
- 9.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 9.2.
- 9.4 The Customer grants Eco a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Eco for the term of the Contract for the purpose of providing the Services to the Customer.
- 10. Data protection**
- 10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and Eco is the processor.
- 10.3 Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Eco for the duration and purposes of the Contract.
- 10.4 Without prejudice to the generality of clause 10.1, Eco shall, in relation to any personal data processed in connection with the performance by Eco of its obligations under the Contract:
- (a) process that personal data only on the documented written instructions of the Customer unless Eco is required by Data Protection Legislation to otherwise process that personal data;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the European Economic Area unless the following conditions are fulfilled:
- (i) the Customer or Eco has provided appropriate safeguards in relation to the transfer;
- (ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
- (iii) Eco complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- (iv) Eco complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and immediately inform the Customer if, in the opinion of Eco, an instruction infringes the Data Protection Legislation.
- 10.5 The Customer consents to Eco appointing third-party processors of personal data under the Contract. Eco confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 10 and in either case which Eco confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Eco, Eco shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 10.
- 10.6 Either party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 11. Confidentiality**
- 11.1 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, except as permitted by clause 11.2.



- 11.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 12.1 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (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).
- 12.3 Subject to clause 12.2, Eco's total liability to the Customer shall not exceed the value of the Contract.
- 12.4 Eco has given commitments as to compliance of the Goods and Services with relevant specifications in the Order. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.5 This clause 12 shall survive termination of the Contract.
- 13. Termination**
- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 1 months' written notice.
- 13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) 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), 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;
 - (b) 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
 - (c) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13.3 Without affecting any other right or remedy available to it, Eco may by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment.
- 13.4 Without affecting any other right or remedy available to it, Eco may terminate the Contract with immediate effect, or suspend the supply of Services or all further deliveries of Goods under the Contract, by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2(a) to clause 13.2(c), or Eco reasonably believes that the Customer is about to become subject to any of them.
- 14. Consequences of termination**
- 14.1 On termination of the Contract:
- (a) the Customer shall immediately pay to Eco all of Eco's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Eco shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all of Eco Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Eco may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 14.2 Termination or expiry of the Contract 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 Contract which existed at or before the date of termination or expiry.
- 14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
- 15. Force majeure**
- Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).
- 16. General**
- 16.1 Assignment and other dealings**
- (a) Eco 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 Contract.
 - (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 Contract without the prior written consent of Eco.
- 16.2 **Severance.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If that modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to, or deletion of, a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms.
- 16.3 Governing law.** The Contract 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.
- 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 Contract or its subject matter or formation.

