

INSTAGROUP

Terms and conditions for the supply of goods and/or services by Suppliers and Sub- contractors

These terms and conditions shall apply to all Goods and Services supplied by a Supplier of Insta.

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;
Commencement Date	has the meaning set out in clause 2.2;
Conditions	these terms and conditions as amended from time to time in accordance with clause 16.8;
Consumer	a Customer that is a natural person who is receiving Goods and/or Services from Insta outside of his/her trade, business or profession;
Contract	the contract between Insta and the Supplier for the supply of Goods and/or Services in accordance with these Conditions;
Customer	the person or firm who purchases Goods and/or Services from Insta, including all Consumers. "Customer" does not include any party purchasing Goods from Insta in order to perform Services on Insta's behalf;
Deliverables	the deliverables (if any) set out in the Order;
Delivery Location	has the meaning set out in clause 4.1;
ECO	means the statutory scheme established by The Electricity and Gas (Energy Company Obligation) Order 2012 ('the ECO Order') under which certain energy suppliers will be required to deliver energy efficiency measures to domestic households. Further information about ECO is available on the Ofgem and DECC websites;
Force Majeure Event	has the meaning given to it in clause 16.1.1;
Goods	the goods (or any part of them) set out in the Order;
Goods Specification	any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by Insta and the Supplier;
Green Deal Framework	means the scheme operated by the Department of Energy and Climate Change, as governed by the Green Deal Framework Regulations of 2012 (as may be amended from time to time);

Insta	the Insta company specified in the Order;
Intellectual Property Rights	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) British Board of Agrément Certificates, Irish Board of Agrément Certificates and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
Order	the written order specifying the Goods and Services to be delivered including any applicable terms as may be set out in a purchase order, quotation, specification, work schedule or other written document and, where applicable, shall include a Green Deal Plan;
Services	the services, including the Deliverables, supplied by the Supplier to Insta as set out in the Order;
Supplier	means the party supplying Goods and/or Services to Insta under this Contract and shall also include any sub-contractors providing goods and/or services to Customers on behalf of Insta;
Supplier Materials	has the meaning set out in clause 8.1.4.

1.2 Construction. In these Conditions, the following rules apply:

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

2. Basis of contract

- 2.1 The Order constitutes an offer by Insta to purchase Goods and/or 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, or when Insta returns a signed acceptance form to the Supplier, at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Any quotation given by the Supplier shall constitute an offer which can be accepted by Insta.
- 2.5 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 Order.
- 3.2 The Supplier reserves the right to amend any Goods Specification if required by any applicable statutory or regulatory requirements.

4. Delivery of Goods

- 4.1 The Supplier shall deliver the Goods to or collect the Goods from the location set out in the Order or such other location as the parties may agree (Delivery Location) at a time agreed by the parties after the Supplier notifies Insta that the Goods are ready or as soon as practicable thereafter.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods shall be of the essence, unless otherwise agreed in writing between the parties.
- 4.4 If 30 Business Days after the Supplier notified Insta that the Goods were ready for delivery and Insta has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.
- 4.5 Insta shall not be entitled to reject the Goods if the Supplier delivers up to and including 2.5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from Insta that the wrong quantity of Goods was delivered.
- 4.6 The Supplier 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 Insta to cancel any other instalment.

5. Quality of Goods

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (Warranty Period), the Goods shall:
- 5.1.1 conform in all material respects with the Order or any other guarantee provided by the Supplier;
 - 5.1.2 be free from material defects in design, material and workmanship at the point of delivery; and
 - 5.1.3 where the Supplier performs the Services and installs / uses the Goods, the Goods will be free from defects in material and workmanship for a period of three months from delivery, provided they are installed in accordance with manufacturer's recommendations and used for their intended purpose.
- 5.2 Subject to clause 5.3, if:
- 5.2.1 Insta gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and
 - 5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 Insta (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.3.1 Insta makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because Insta failed to follow the Supplier'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;
 - 5.3.3 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by Insta;
 - 5.3.4 Insta alters or repairs such Goods without the written consent of the Supplier;
 - 5.3.5 the Goods differ from their description 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, the Supplier shall have no liability to Insta in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.

6. Title and risk

- 6.1 The risk in the Goods shall pass to Insta on completion of delivery.
- 6.2 Title to the Goods shall not pass to Insta until the Supplier has received payment in full (in cash or cleared funds) for the Goods.
- 6.3 Until title to the Goods has passed to Insta, Insta shall hold the Goods as the Supplier's bailee but Insta may resell or use the Goods in the ordinary course of its business.

7. Supply of Goods and/or Services

- 7.1 The Supplier shall provide the Goods and/or Services to Insta in accordance with the Order in all material respects.
- 7.2 The Supplier shall have the right to make any changes to the Goods and/or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods and/or Services, and the Supplier shall notify Insta in writing in any such event.
- 7.3 The Supplier warrants to Insta that the Services will be provided using reasonable care and skill.
- 7.4 To the extent that any Goods and/or Services are supplied by the Supplier under the Green Deal Framework and / or ECO, the terms at Schedule 1 to this Agreement shall also apply.

Clauses 7.5 to 7.6 below only apply to the Supplier where it is acting as a subcontractor to Insta:

- 7.5 Where funding for the Goods and / or Services has been secured by Insta, the Supplier must acquire the Goods from Insta or another party approved in writing by Insta.
- 7.6 The Supplier must adhere to Insta's health and safety policy as published on Insta's website and updated from time to time.

8. Insta's obligations

- 8.1 Insta shall:
 - 8.1.1 co-operate with the Supplier in all matters relating to the Goods and/or Services;
 - 8.1.2 provide the Supplier, its employees, agents, consultants and subcontractors, with access to Insta's premises and other facilities as reasonably required by the Supplier to provide the Goods and / or Services;
 - 8.1.3 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects; and
 - 8.1.4 keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at Insta'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 instructions or authorisation.

9. Charges and payment

- 9.1 The price for Goods shall be confirmed in writing by the Supplier. Unless otherwise agreed by the parties, the price of the Goods is inclusive of all costs and charges of packaging, insurance and transport.
- 9.2 The charges for Services shall be as specified in the Order:
- 9.2.1 if no price is quoted in the Order the charges set out in the Supplier's published price list at the date of delivery shall apply;
- 9.2.2 unless agreed in writing in advance by the parties, the Supplier shall not be entitled to charge Insta for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 9.3 The Supplier reserves the right to increase its charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give Insta written notice of any such increase at least 4 calendar months before the proposed date of the increase. If such increase is not acceptable to Insta, it shall notify the Supplier in writing within 4 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 8 weeks' written notice to Insta.
- 9.4 In respect of Goods, the Supplier shall invoice Insta on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice Insta on monthly in arrears or as otherwise agreed in the Order. Each invoice shall include such supporting information required by Insta to verify the accuracy of the invoice, including but not limited to, the relevant purchase order number.
- 9.4.1 Insta shall pay each invoice submitted by the Supplier within the agreed credit terms or, if no terms have been specified, 60 days of the date of receipt of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 9.5 All amounts payable by Insta 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 the Supplier to Insta, Insta 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 Goods and/or Services at the same time as payment is due for the supply of Goods and/or Services.
- 9.6 Without limiting any other right or remedy of the Supplier, if Insta fails to make any payment properly due and payable to the Supplier under the Contract the Supplier shall have the right to charge interest on the overdue amount at the rate of 2% per cent per annum above the then current Royal Bank of Scotland's base rate accruing on a daily basis until the date of actual payment of the overdue amount, whether before or after judgment. This clause shall not apply to payments that Insta

disputes in good faith or to payments in respect of which at least two written reminders have not been sent to Insta.

9.7 Insta may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by Insta to the Supplier under the Contract

10. Intellectual property rights

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Insta.

11. Data Protection

11.1 The Supplier undertakes that it will comply, and will cause its employees and agents to comply, with the Data Protection Act 1998 and all applicable data protection laws in connection with the performance of its obligations under these Conditions.

12. Confidentiality

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

13. Insurance

13.1 Where the Supplier is acting as a subcontractor to Insta, the Supplier shall maintain in force a professional indemnity insurance policy with a limit of at least £1,000,000 per claim with a reputable insurance company to cover its relevant potential liabilities in connection with this Contract.

14. Limitation of liability

14.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

14.1.2 fraud or fraudulent misrepresentation;

14.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

14.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

14.1.5 defective products under the Consumer Protection Act 1987.

- 14.2 Subject to clause 14.1:
- 14.2.1 the Supplier shall under no circumstances whatever be liable to Insta, for any indirect or consequential loss arising under or in connection with the Contract ; and
 - 14.2.2 the Supplier's total liability to Insta in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the higher of (i) 200% of the sum payable under the Order or (ii) £100,000.
- 14.3 This clause 14 shall survive termination of the Contract.

15. Termination

- 15.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 15.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing of the breach;
 - 15.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or;
 - 15.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 15.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - 15.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
 - 15.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 15.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - 15.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 15.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- 15.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.2 to clause 15.1.9 (inclusive);
- 15.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 15.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

16. General

16.1 Force majeure:

- 16.1.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, withdrawal of funding by a utility service or the government or default of suppliers or subcontractors.
- 16.1.2 The Supplier shall not be liable to Insta as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 16.1.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 4 weeks, Insta shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Supplier.

16.2 Assignment and subcontracting:

The Supplier shall not, without the prior written consent of Insta, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.3 Notices:

- 16.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 16.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

- 16.3.3 This clause 16.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall include e-mails and for the avoidance of doubt notice given under this Contract shall be validly served if sent by e-mail.
- 16.4 Waiver and cumulative remedies:
- 16.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 16.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
- 16.5 Severance:
- 16.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 16.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Insta.
- 16.9 Entire agreement:
- 16.9.1 Subject to clause 7.4, these Conditions, the Order and any relevant Schedule constitute the entire agreement between the parties in relation to a specific Order and supersede and extinguish all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 16.9.2 In the event of any clash or conflict between any of the terms of the Contract the following order of precedence shall apply:
- (a) Order;
 - (b) Schedule (if any applicable); and

(c) Conditions.

- 16.9.3 Each party acknowledges that in entering into these Conditions and any Order, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance or warranty of any person other than as expressly set out in these Conditions or Orders.
- 16.9.4 No party shall have any claim for innocent or negligent misrepresentation based upon any statement in these Conditions or an Order.
- 16.10 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.