

SITE ELECTRICAL LTD CONDITIONS OF SALE B

FOR CONTRACTS INCLUDING INSTALLATION AND COMMISSIONING - UNITED KINGDOM

1. **General**

All Contracts of Sale between the Seller and the Buyer are subject to these Conditions of Sale unless the Seller specifically varies the same in writing. In the event of conflict or inconsistency between these Conditions and the terms or conditions of any order or acceptance these Conditions shall prevail.

For sake of certainty between Seller and Buyer, no representations or warranties made by any of the Seller's staff form part of this contract or constitute a collateral contract unless specifically confirmed in writing.

2. **Validity**

All tenders are open for acceptance for a period of 30 days unless otherwise agreed in writing by the Seller. Any despatch dates shown in the Seller's tender are subject to confirmation on receipt of the Buyer's order.

3. **Acceptance**

The acceptance of the Seller's tender must be accompanied by all the necessary information that the Seller may reasonably require, including any specified in our tender, from time to time to permit the Seller to proceed uninterrupted with the design of the Works, manufacture of the Plant and its erection and commissioning. In the event that the Works is increased thereby, the Seller shall be entitled to amend the Contract Price to compensate the Seller for any additional costs that the Seller has reasonably or properly incurred and to extend the completion date by a reasonable period.

4. **Limits of Contract**

The Seller's Contract includes only such goods, accessories and work as are specified therein.

5. **Drawings**

5.1 All specifications, drawings and particulars of weights and dimensions submitted with the Seller's tender are approximate only and the descriptions and illustrations contained in the Seller's catalogues, price lists and other advertisement matter are intended merely to present a general idea of the goods described therein and none of these shall form part of the Contract.

5.2 It is agreed that the Buyer does not rely on any representation made by the Seller or on the Seller's behalf save only such representations (if any) as are contained in the Seller's offer.

5.3 All drawings and design information shall remain the property of the Seller and shall not be copied or reproduced or disclosed to a third party without the written consent of the Seller.

5.4 **Approval of Drawings**

Where the Buyer requires drawings to be approved as a condition of the Contract such approval is required within 21 days of despatch of drawings to the Buyer. Failure to approve within this time period may delay delivery.

6. **Inspection and Tests**

6.1 Unless otherwise stated the Seller's standard quality assurance tests have been carried out on all goods.

6.2 If tests other than those specified in the Seller's tender, or tests in the presence of the Buyer or the Buyer's representative are required, these will be charged for. In the event of any delays by the Buyer in attending such tests, after seven days notification of readiness to proceed, the tests will proceed in the Buyer's absence and will be deemed to have been made in the Buyer's presence.

6.3 Where the Contract provides that the Plant shall pass any prescribed test or shall have a specified performance, it shall be tested either before delivery or on the site as may be required by and in accordance with the Contract.

6.4 Where the Contract provides for tests on the site, the Buyer shall provide free of charge such labour, materials, electricity, fuel, water stores and apparatus as may be requisite and as may reasonably be required to carry out such tests efficiently.

6.5 Commissioning tests shall be performed in accordance with the agreed commissioning test specification and commenced within seven days after the Seller has given written notice to the Buyer that the Works have been erected and are ready for commissioning. It will be the Buyer's responsibility to ensure that during the period of commissioning the Plant is working normally in accordance with the operating procedures and limits (if any) laid down and that members of the Buyer's staff whose acts or omissions may affect the operation of the Works exercise all appropriate skill and care. For the purpose of Clause 12 (Time of taking Over) commissioning shall nevertheless be deemed to have been successfully carried out if due to circumstances within the Buyer's control or that of other contractors the commissioning tests are delayed beyond the time stated in the Contract or when no time is stated for an unreasonable time. In such event commissioning tests shall subsequently be carried out at a time to be agreed and all extra costs incurred by the Seller in consequence of the commissioning tests being carried out at a date later than that specified in the Contract shall be added to the Contract Price and paid for accordingly.

6.6 The Seller will give the Buyer written notice of the date and the place at which any Plant will be ready for testing as provided in the Contract and if the Buyer fails to give the Seller 24 hours notice in writing appointing a day within seven days thereafter for the commencement of the tests or shall fail to attend on the day so appointed the Seller may proceed with the tests which shall be deemed to have been made in the Buyer's presence. The Seller shall forthwith forward to the Buyer a certificate of the results of the tests.

7. **Site Facilities and Working Conditions**

The Seller's tender is based on the Seller's estimate of the extent of the Works in the light of information (including the Buyer's site safety regulations) produced to the Seller and unless otherwise specified assumes the following conditions -:

(a) The Buyer will provide suitable access to and possession of the site to an agreed programme or in reasonable time.

(b) Erection and commissioning will not be carried out in unhealthy or unsafe conditions not compliant with current legislation or the Company's own Health and Safety policies.

(c) The Seller's employees will be able to obtain suitable and convenient board and lodging in the neighbourhood of the site and have access to adequate medical services.

(d) Such equipment, craneage, consumable stores, water and power, scaffolding, lighting, heating and labour as are specified in the Contract will be available to the Seller on site and in reasonable time, and except as otherwise agreed, free of charge.

(e) The Buyer will provide the Seller with suitable guarding, lighting and protection of the Plant and Works from the time of delivery and all other necessary facilities and adequate assistance.

(f) The Seller shall not be required to undertake any building, civil engineering or demolition work unless previously agreed. If these conditions are not satisfied, the Seller shall be entitled to charge extra.

8. **Hours of Work**

The Seller's employees will work normal hours applicable to the engineering industry, Monday to Friday inclusive, local public holidays excepted. Unless stated to the contrary in the Seller's tender or otherwise agreed, nightwork, overtime and holiday working are specifically excluded and will be charged extra.

9. **Extra Cost**
Should the Seller incur extra cost owing to variation, lack of continuity or suspension of the Works by the Buyer's instructions or lack of instruction or to interruptions, delays, overtime, unusual hours, mistakes or work for which the Seller is not responsible, or to any specified site facilities and working conditions not being maintained by the Buyer, the Contract Price will be adjusted by such amounts as may be reasonable in all circumstances.
10. **Performance**
The Buyer assumes responsibility that any performance requirements or equipment stipulated by the Buyer in his enquiry are sufficient and suitable for the Buyer's purpose save in so far as the Buyer's stipulation is in accordance with the Seller's advice. If the results of the commissioning tests show that the Seller has failed to achieve performance figures quoted by the Seller and which the Seller has specifically guaranteed (subject to any tolerance) in an agreed sum as liquidated damages provided for the failure at the rates and subject to the terms set out in the said specific guarantee. Before the Buyer becomes entitled to payment of liquidated damages or to reject the Works the Seller shall be given reasonable time and opportunity to make good the said failure.
- The payment by the Seller of liquidated damages shall be in full satisfaction of the Seller's liability under this clause, and the Seller shall not be liable for failure to meet any performance required not so guaranteed in writing.
- Other than as stated, the Seller excludes any liability for loss or damage caused to the Buyer arising directly or indirectly from the failure of the goods or equipment to conform to the Buyer's required performance.
11. **Liability for Delay**
- 11.1 Any times quoted for completion of tests on commissioning are to date from receipt by the Seller of a written order to proceed and of all necessary written information and drawings to enable the Seller to put the work in hand. The time for such completion shall be extended by a reasonable period if delay in such completion is caused by industrial dispute, or by any cause beyond the Seller's reasonable control.
- 11.2 All such times are to be treated as estimates and whilst the Seller shall make all reasonable efforts to maintain delivery schedules the Seller shall not be liable for any loss or damage, direct, indirect or consequential whether foreseeable or unforeseeable due to any delay in delivery save in so far as both parties agree a predetermined level of damages payable per week for delay.
- 11.3 Without limiting the generality of the foregoing the Seller shall not be responsible for delays occasioned by any Carriers.
12. **Time of Taking Over**
the Works or any portion thereof shall be taken over at the earlier of the following times and a takeover certificate issued accordingly :-
- (a) When installation has been completed and the Works or such portion has passed or is deemed to have passed the commissioning tests.
- (b) When the Works or such portion have been put into commercial use.
- The time of taking over shall not be delayed on account of additions, minor omissions or defects which do not materially affect the use of the Works.
13. **Variation, Cancellation and Suspension**
- 13.1 In the event of variation of work by the Buyer's instructions or lack of instructions the Contract price shall be adjusted accordingly.
- 13.2 The Buyer shall only be entitled to cancel the Contract on payment of cancellation charges by the Seller in accordance with the following :-
- (a) a cancellation charge in respect of handling, administrative and other incurred costs (including a reasonable sum in respect of profits)
- plus
- (b) an amount in respect of cancellation charges which may have been imposed on the Seller by manufacturers of ancillary equipment, erection contractors and the like
- plus
- (c) the whole price of any equipment made or adapted to the Buyer's specification.
- 13.3 In the event of suspension of the Contract the Seller shall be entitled to payments in accordance with 13.2 above.
14. **Delivery and Packing**
Unless otherwise specified in the Seller's tender, the price quoted excludes delivery and packing. These will be charged as extra to the contract. Delivery will be any method of transport at the Seller's option.
15. **Buyers Materials etc.**
- 15.1 Where goods are to be supplied wholly or partly to the Buyer's specifications or incorporating parts or materials of the Buyers supply the Buyer must agree to produce (at the Buyer's cost) any person, document or detail required for such specification and any part or material as the case may be, forthwith upon being called upon to do so by the Seller who shall be entitled to assume that such information is correct.
- 15.2 In the event of the Buyer's failure to carry out the foregoing the Seller shall be entitled to treat the Contract as suspended within the meaning of paragraph 13.3 above.
- 15.3 The Buyer further warrants that specifications, parts and materials (including "free issue" materials) shall be fit for the Seller's purpose.
16. **Prices and Terms of Payment**
- 16.1 The prices charged will be those specified in the Contract.
- 16.2 Invoicing of the Contract will be as follows :-
- (a) 80% of the Contract as and when delivered to site (or 14 days from notification of readiness to ship [see Clause 16.7]).
- (b) 100% of value or work done on site in each month.
- (c) 15% of Contract Value on installation (being 95% of Total Contract Value to this stage).
- (d) 5% of Contract Value on commissioning or 90 days after installation whichever occurs first.
- 16.3 Unless otherwise agreed in writing payment shall be made within 30 days of the date of the Seller's invoice provided that, if before delivery is made the Seller has reasonable grounds for doubting the Buyer's intention or ability to pay, the Seller reserves the right to demand security from the Buyer or to take such action as may appear suitable to the Seller to protect his interests.
- 16.4 Should the Buyer default payment, for whatever reason, on the due date of any sum, without prejudice to any other right which the Seller may have, the Seller shall be entitled to be paid interest at the rate of 8% above the National Westminster Bank plc Base Rate from time to time accruing from the date of invoice.
- 16.5 The property in the goods shall not pass to the Buyer until they have been paid for, or in the case of the Seller accepting tender of any cheque, bill or promissory note until the same has been honoured. If nevertheless the Buyer sells the goods before they have been paid for in full he shall hold the proceeds of sale on trust for the Seller.

All goods the Seller has supplied must be kept separate, away from the Buyer's goods until installation, must be kept safe, open to inspection by the Seller and the Seller to have right of entry at all times to inspect them and to remove them, until payment has been made.

- 16.6 All prices referred to herein exclude Value Added Tax, Purchase Tax or any other tax or duty which is or may be levied or charged. The amount of such taxes or duties calculated at the rate prevailing at the appropriate time will be added to such prices.
- 16.7 If the Seller does not receive forwarding instructions within 14 days after date of notification that the goods are ready for despatch in accordance with the Contract they shall be deemed to have been delivered and shall be invoiced.

Material defects or omissions in the Works, not of such importance as to affect materially its commercial use, shall entitle the Buyer to retain from the payment mentioned in 16.2 above only such sum as represents the value of such defects or omissions and any sum so retained shall be paid upon such omissions or defects being remedied, which shall be done by the Seller at the earliest opportunity.

17. **Retentions**

Retention's, as per the Contract, may be deducted from interim payments. All retention monies are due on expiry of the retention period as defined in the Contract.

Any delay in payment of the retention's will give rise to claims under Clause 16.4.

18. **Risk and Storage Charges**

- 18.1 All risk of loss or damage howsoever caused shall pass to the Buyer on delivery. Unless otherwise agreed in writing delivery shall be deemed to be completed at the Seller's premises.
- 18.2 Upon expiry of 14 days from the Seller's notice that the goods are ready for despatch the Seller shall be entitled to recover a reasonable charge for storage of the goods.
- 18.3 If the Seller shall decide to remove the goods pending despatch or collection or to store them or to insure them the Buyer shall be bound by such arrangements as if made on the Buyer's behalf and any costs, charges, fees, premiums or expenses thereby incurred shall be charged to the Buyer.

19. **Final Certificate**

Upon expiry of the defects liability period specified in Clause 20, the Seller shall be under no further obligation or liability to the Buyer either under the Contract or in tort (including but not limited to negligence), unless within 14 days thereafter the Buyer shall have given the Seller written notice of any matter in respect of which the Seller remain obliged or liable to the Buyer. The Buyer shall issue to the Seller a final certificate to the effect that the Seller has fulfilled all the Seller's obligations and liabilities to the Buyer immediately upon expiry of the said period of 14 days or, in the event that the Buyer has given the Seller notice as aforesaid which the Seller has not disputed, immediately upon the Seller having dealt with the matter(s) specified therein.

20. **Defects After Delivery (Warranty)**

- 20.1 Upon discovering a fault in the supplied equipment the Buyer must immediately notify the Seller of the existence of a fault and allow reasonable opportunity for inspecting the same before remedial work is undertaken. Failure to notify the Seller prior to remedial work being undertaken will be deemed a waiver or release by the Buyer of his rights under Clause 20.2.
- 20.2 The Seller will make good, by repair or at the Seller's option by supply of a replacement, defects which, under proper use, appear in the goods within a period of twelve calendar months after the goods have been commissioned (or deemed commissioned as under Clause 12) and arise solely from faulty design (other than a design made, furnished, specified or approved by the Buyer), materials or workmanship: provided always that defective equipment has been returned to the Seller if the Seller so requires. The Seller shall refund the cost or carriage on such returned equipment and the repaired or new equipment will be delivered by the Seller free of charge.
- 20.3 The Seller's liability under this clause shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the goods, and save as provided in this Clause the Seller shall not be under any liability, whether in Contract, tort or otherwise, in respect of defects in goods delivered or for any injury (other than personal injury caused by the Seller's negligence as defined in Section 1 of the Unfair Contract Terms Act, 1977), damage or loss resulting from such defects or from any work done in connection therewith.
- 20.4 The Seller shall not be liable under the above warranty unless the equipment has been stored, installed, operated and maintained in accordance with the Seller's instructions or recommendations or, in the absence of such instructions, in accordance with current good practice.

21. **Patents**

The Seller will indemnify the Buyer against any claim for infringement of Letters Patent, Registered Design, Trade Mark or Copyright (published at the date of the contract) by the use of any article or material supplied by the Seller to the Buyer and against all costs and damages which the Buyer may incur in any action for such infringement or for which the Buyer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to the Seller having followed a design or instruction furnished or given by the Buyer or to the use of such article or material in a manner or for a purpose or in a foreign country not specified by or disclosed to the Seller, or to any infringement which is due to the use of such article or material in association or combination with any other article or material not supplied by the Seller. And provided also that this indemnity is conditional on the Buyer giving to the Seller at the Seller's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim. The Buyer on the Buyer's part warrants that any design or instruction furnished or given by the Buyer shall not be such as will cause the Seller to infringe any Letters Patent, Registered Design, Trade Mark or Copyright in execution of the Buyer's order.

22. **Liability for Accident and Damage**

If the Seller, their agents or sub-contractors are on site for the purpose of the contract then, notwithstanding the provisions of Clause 20 the Seller will indemnify the Buyer against direct damage or injury to the Buyer's Building or equipment or persons whether employees of the Buyer or to whom the Buyer owes responsibility occurring while the Seller is working on site to the extent caused by the negligence of the Seller, their sub-contractors or agents, but not otherwise, by making good such damage to building or equipment or compensating personal injury. Provided that -:

- (a) The Seller's total liability for damage to the Buyer's building or equipment (including damage caused by Seller's breach of contract, tort or breach of statutory duty) shall not exceed £250,000 or the contract price, whichever is the greater, and
- (b) The Seller shall not be liable to the Buyer for any loss of profit or of contracts or, save as aforesaid, for any loss or damage of any kind whatsoever and whether caused by the Seller's breach of contract, tort, breach of statutory duty or otherwise howsoever.

Save as provided in Clause 20, the Seller shall not be liable for any damage or injury occurring after the Seller's completion of work on site.

23. **Arbitration**

If at any time any question, dispute or difference whatsoever shall arise between the Buyer and the Seller upon, in relation to, or in connection with the Contract, either the Seller or the Buyer 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 30 days of receipt of such notice, of some person appointed by the President for the time being of the Institute of Electrical Engineers or Mechanical Engineers.

24. **Force Majeure**

The Seller reserves the right to delay or suspend performance of the Contract if circumstances beyond the Seller's reasonable control, including any form of Government intervention, strike, lockout, breakdown of plant, delay by sub-contractor (only where the delay is beyond the control of the sub-contractor concerned) or delay by the Seller's supplier, prevent the continuance of the Contract as programmed.

The Seller will notify the Buyer immediately, (and confirm in writing) specifying the cause of delay or prevention and will keep the Buyer fully apprised of the situation.

The Buyer will, upon receipt of the notice of suspension, cease all work in relation to the order and inform the Seller of the state of completion as per the original programme.

Notice to continue, specifying the revised date of completion (after due recognition of the original programme and the relationship of the state of completion at time of suspension, with regard to that programme), will be given in writing to the Buyer when the Contract is re-instated.

The Seller may cancel the order at any time during the duration of the Contract (or during the period of suspension) and pay the Buyer such sums as may be fair and reasonable in all the circumstances of the case in respect of work performed by the Buyer prior to notice of cancellation or suspension and in respect of which the Seller shall have received benefit.

25. **The Seller reserves the right** at his discretion, during the execution of the Buyer's order to substitute goods of a similar specification. Such changes shall not lower the design performance of the goods.

26. **Legal Construction**

Unless otherwise agreed in writing the contract shall in all respects be construed and operate as an English contract and in conformity with English Law.

27. **Headings**

The headings of these Conditions are for convenience only and shall in no way form part thereof.

28. **Health & Safety at Work Act 1974**

The attention of the Buyer is drawn to the provisions of the Health & Safety at Work Act 1974. The Seller will make available upon request information on the design, construction and installation of its products to ensure that as far as is reasonably practicable they are safe and without risk to health when properly used. It is the responsibility of the Buyer to take such steps as are necessary to ensure that the appropriate information relevant to the goods is available to its servants, agents and any person to whom the Buyer supplies them and to any other person the Buyer reasonably considers should have knowledge thereof.

29. **Statutory and Other Regulations**

If the cost to the Seller of performing the Seller's obligations under the Contract shall be increased or reduced of the making or amendment after the date of tender, of any law or any order, regulations or bylaw, having the force of Law that shall affect the performance of the Seller's obligations under the Contract, the amount of such increase or reduction shall be added to or deducted from the Contract Price as the case may be.

30. **Variation in Costs**

If the cost to the Seller of performing the Seller's obligations under the Contract shall be increased or reduced by reason of any rise or fall in the cost of labour or in the cost of materials or transport above or below such costs ruling at the date of tender, the amount of such increase or reduction shall be added to or deducted from the Contract Price as the case may be, provided that no account shall be taken of any amount by which any costs incurred by the Seller has been increased by the Seller's default or negligence.