

# Central Power Ltd — Conditions of Sale

Revised October 2017

## 1. Definitions

- (a) "the Contractor" is Central Power Ltd.
- (b) "the Customer" is any party entering into a contract with the Contractor for the supply, installation or maintenance of goods, materials or equipment.
- (c) Delivery of goods shall be deemed to take place:
  - (i) where goods are delivered by the Contractor's own transport, at the moment when the goods or materials are lifted from the delivery vehicle; or
  - (ii) where goods are delivered by other means of transport, at the moment when the goods or materials are loaded onto the vehicle used for such transport.
- (d) "Normal Working Hours" means any 8 hour period at the Contractor's discretion between the hours of 7.30 am and 6.30 pm Monday to Friday excluding bank holidays.
- (e) "Act of Insolvency" means:
  - (i) the Customer having any distress execution or other legal process levied upon it; or
  - (ii) the Customer making, or offering to make, any arrangements or compromise with creditors, or committing any act of bankruptcy; or
  - (iii) the Customer having any petition or receiving order in bankruptcy presented or made against it.
  - (iv) the Customer having a receiver of its property or assets or any part of them appointed;
- (f) "Plant" means any generator, vehicle or other item of self-contained equipment hired by the Contractor from a third party for the Contractor's use at the Customer's premises for the purpose of work for the Customer.

## 2. General

- (a) These Terms and Conditions apply to every contract between the Contractor and any Customer and to all further contracts between the Contractor and that Customer (until and unless the Contractor notifies that Customer of revised Terms and Conditions).
- (b) No prior statements made by the Contractor or the Customer, nor any correspondence between them, are incorporated into any such contract unless separately agreed in writing by the Contractor.
- (c) No representation by or on behalf of the Contractor by an employee or agent (including but not limited to advice or recommendations as to the quality or suitability for specific purposes of the Contractor's goods) takes effect unless separately confirmed by the Contractor in writing and the Customer agrees that it does not enter into any contract in reliance on such representations unless so confirmed.
- (d) The Customer acknowledges and accepts that the Contractor may:
  - (i) make such changes to the specification of its goods as are required to comply with applicable safety or statutory requirements;
  - (ii) increase its prices after the contract is agreed to reflect any increase in the price it is charged by its suppliers for goods or materials.
- (e) Other than in accordance with these terms and conditions, no variation to any contract takes effect unless agreed in writing by a director of the Contractor.
- (f) Any agreed variation in the scope of work will be charged for by the Contractor at the sum agreed between the parties or, in default of such agreement on price, at the Contractor's prevailing rates.

- (g) No waiver by the Contractor of any of these Terms and Conditions or forbearance to enforce any remedy it is entitled to shall prejudice any of the Contractor's other rights and remedies or operate as a waiver of any other breach by the Customer under any contract with the Contractor.
- (h) Should any of these Terms or Conditions be held to be invalid or unenforceable in whole or in part the validity and enforceability of the remaining part and of the other Terms and Conditions shall not be affected.
- (i) The Customer may not assign the benefit of any contract with the Contractor without the written consent of the Contractor.
- (j) Nothing in these terms and conditions shall confer any right upon a third party and the Customer agrees that the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded from any contract to which these terms and conditions apply.

## 3. Credit

- (a) Credit will be granted at the sole discretion of the Contractor and subject to the Customer providing a fully-completed application form and to the Customer's references being taken up and reviewed.
- (b) The provision of credit by the Contractor to the Customer is subject to the Customer's compliance with Clause 4(a) and may be withdrawn by the Contractor at any time and at the Contractor's sole discretion.
- (c) Credit accounts will be reviewed periodically and accounts that have not traded for 6 months may have credit suspended or withdrawn.
- (d) If credit is withdrawn for any reason the Contractor shall be entitled to any or all of the remedies under Clause 4(d).

## 4. Payment

- (a) All invoices are strictly net for payment within 30 days of date of invoice and time of payments shall be of the essence of the contract.
- (b) Where goods are sold by instalments each instalment shall be invoiced and paid for separately.
- (c) Where installation work is carried out the Contractor may issue periodic invoices.
- (d) If for any reason whatsoever payment is not made when due the Contractor shall be entitled to:
  - (i) charge interest and fees in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;
  - (ii) cancel or suspend any contract with the Customer;
  - (iii) require the Customer to pay any other sums due to the Contractor immediately;
  - (iv) enter into the premises of the Customer and repossess and remove all of its goods that remain its property under clause 8.
- (e) The Customer agrees that it shall not be entitled to withhold payment by reason of set-off or counterclaim in respect of any claim disputed by the Contractor.
- (f) The Customer agrees to indemnify the Contractor in respect of any fees costs disbursements or expenses incurred (including court fees and the reasonable cost of legal representation) arising from overdue payment by the Customer or any other breach by the Customer of these terms and conditions.

## 5. Termination or Suspension

- (a) Without prejudice to any of its other rights the Contractor may terminate the contract or suspend further deliveries to the Customer in the event of:
  - (i) the Customer failing to make due payment in accordance with Clause 4(a) for any goods or work done; or
  - (ii) any act of Insolvency relating to the Customer; or
  - (iii) the Contractor receiving any information indicating that the Customer is or may become unable to pay its debts.
- (b) In the event the contract is terminated under clause 5(a) the Contractor shall be entitled to any or all of the remedies under clause 4(d).
- (c) The Contractor reserves the right to withhold performance of any of its obligations under the contract if in its sole opinion the Customer's credit status becomes unsatisfactory.

## 6. Customer's Obligations

- (a) The Customer shall ensure that its employees and visitors comply with all access control and health and safety requirements specified by the Contractor during the duration of the installation works.
- (b) The Customer shall ensure uninterrupted access for the Contractor to the work site for the duration of the installation works.
- (c) The Customer shall ensure adequate provision of power and light for the Contractor to carry out work.
- (d) The Customer shall be responsible at all times for any loss or theft of, or damage to, the goods supplied by the Contractor howsoever caused and for the safe storage of the Contractor's materials, plant, vehicles and equipment at the Customer's premises.
- (e) The Customer shall reimburse the Contractor in full for the value of any of the Contractor's materials, plant, vehicles and equipment at the Customer's premises that suffer damage or loss, howsoever caused.
- (f) Where applicable the Customer shall ensure that all existing surfaces and structures to which the works are to be applied fixed or laid are true and even with the specified and/or approved tolerances before the works are commenced.
- (g) If it is found by the Contractor that the existing surfaces or structures are not within the specified and/or approved tolerances, then the Contractor is under no obligation to execute any of the works until such surfaces or structures are rectified.
- (h) If the Contractor is instructed to proceed with the works regardless of the existence of defective surfaces or structures then the Customer shall be fully liable for the completed works and any warranties given by the Contractor shall be null and void.
- (i) Where the works carried out by the Contractor are alterations, adaptations, modifications, or extensions to any existing works, the Contractor shall not be liable for any defect which may become apparent in the existing works by reason of the works executed by the Contractor.

## 7. Delivery, Installation and Storage

- (a) Any date or time quoted for delivery or installation is given as an estimate only and the Contractor shall:
  - (i) not be liable for any loss or damage howsoever arising by any matter beyond its reasonable control

from failure to deliver or carry out installation on or by such stated date or at such stated time;

- (ii) if found liable for loss or damage arising from failure to deliver on such stated date or at such stated time shall be liable only for loss limited to the excess (if any) over the price of the goods of the cost to the Customer of similar goods in the cheapest available market.
- (b) Unless agreed otherwise the Contractor's quotation is based upon the works being executed in normal working hours and undertaken in one single day or block of days, with full continuity of work so as to allow the Contractor to carry out the works in an orderly manner and logical sequence to comply with any completion date agreed with the Customer.
- (c) If it becomes reasonably apparent to the Contractor that the commencement, progress or completion of the works or any party thereof is being or is likely to be delayed for any reason at any time, then the Customer shall in writing grant an extension of time to the Contractor as is fair and reasonable for the completion of the works.
- (d) The Contractor will use reasonable endeavours to accommodate the Customer's programme of work by making reasonable and practical adjustments to its sequence of work. The Customer agrees that if any additional cost is incurred by the Contractor by reason of rescheduling or interrupting its work for the convenience of the Customer then the Contractor will be entitled to charge the Customer for all such costs (including indirect and consequential losses) and to recover such charges in accordance with Clause 4.
- (e) If the Customer causes the delivery of goods or any part thereof to be delayed beyond the time when they would otherwise have been delivered or does not make available a person authorised to sign for a delivery such goods shall be removed to the Contractor's premises or other storage facility and stored by the Contractor at the sole risk and expense of the Customer.
- (f) The Customer agrees that any failure of the Contractor to make any delivery shall not entitle the Customer to cancel or suspend any subsequent or other delivery or contract.

## 8. Passing of Risk and Retention of Title

- (a) Risk in goods supplied passes to the Customer upon delivery by the Contractor as defined at clause 1(c).
- (b) Notwithstanding the provisions of Clause 8(a) as to the passing of risk, goods supplied by the Contractor shall remain its sole property until the Customer has paid in full the agreed price and all other sums due from the Customer to the Contractor whether under this Contract or otherwise (including any interest due). Notwithstanding such retention of title, the Contractor shall be entitled to maintain an action for the price of the goods as soon as payment falls due.
- (c) The Customer acknowledges that it is in possession of such goods as bailee for the Contractor until the sums due in clause 8(b) have been paid in full or the goods have been incorporated or resold in the ordinary course of the Customer's business and shall:
  - (i) insure such goods to their full market value;
  - (ii) store or otherwise identify such goods as to show that they retain the property of the Contractor;
  - (iii) not mortgage, charge or otherwise encumber or dispose of the goods (other than by selling them or incorporating them in the usual course of business) without the written permission of the Contractor.

- (d) Where before payment in full of the sums due in clause 8(b) the Customer incorporates or resells such goods or goods are installed by the Contractor, it shall keep the proceeds of any sale in a non-overdrawn account and hold such proceeds on trust for the Contractor as fiduciary.
- (e) The Customer agrees that if the Contractor invokes its right to repossession of its goods under clause 4(c)(iv) the Contractor shall not be liable for any damage or injury reasonably done in the course of so doing to any other property owned by or in possession of the Customer to which the Contractor's goods have been attached or in which they have been incorporated.

#### **9. Returns**

- (a) Returns for credit of goods supplied in accordance with the Customer's order is at the sole discretion of the Contractor.
- (b) Goods supplied to the special order of the Customer cannot be returned for credit.
- (c) Return of goods is subject to a handling charge as determined by the Contractor and payable by the Customer in accordance with Clause 4(a) and subject to any or all the remedies under Clause 4(c).

#### **10. Claims**

- (a) No claim for defect, damage in transit, short delivery or any other deficiency may be made unless:
  - (i) such deficiency is notified in writing within 7 days of delivery; and
  - (ii) the Contractor is permitted to verify the same within 7 days of notification of the claim.
- (b) In the absence of any such notification within 7 days of delivery the Customer shall be deemed to have accepted the goods.
- (c) The Customer agrees that if it uses or consumes any part of a delivery it is deemed to have accepted that delivery and to have waived any claim or right to claim against the Contractor in respect of it.

#### **11. Warranties and Liability**

- (a) The Contractor warrants that goods will correspond to their specifications as at the time of confirmation of order and that installation or maintenance of goods or equipment will be carried out with reasonable care and skill and to a good standard of quality.
- (b) The Contractor will replace, re-work or give credit to the Customer for any goods which do not comply with the warranty at clause 11(a) and which are accepted by the Contractor for replacement, re-work or credit.
- (c) Other than as set out in clause 11(a) or as expressly confirmed in writing by the Contractor:
  - (i) no warranty condition or representation express or implied as to description, quality or suitability of any goods hereby sold is given by the Contractor or deemed to have been given or implied and (to the extent permitted by statute) any statutory or other warranty condition or representation whether express or implied is hereby excluded;
  - (ii) the Contractor accepts no liability whatsoever for any loss or damage whether consequential or direct and whether suffered by or occasioned to the Customer the employees or agents of the Customer or a third party which may arise after the delivery of the goods.
  - (iii) The Contractor accepts no liability whatsoever for defects in goods or material supplied by the Customer for installation by the Contractor.

- (iv) If materials, goods or equipment supplied under the contract are supplied by a third party subject to that third party's warranty, the Customer's remedy for any defect lies against that third party rather than against the Contractor.
- (v) If materials, goods or equipment are installed for a specific purpose of the Customer, no warranty is given by the Contractor as to fitness for such purpose irrespective of knowledge of it.
- (vi) The Customer accepts (and indemnifies the Contractor from) liability for any damage or loss arising from a breach of Clause 6.

#### **12. Plant**

- (a) The Customer agrees that it shall indemnify the Contractor in respect of all claims whatsoever for theft, injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of Plant during the period that the Plant is on hire by the Contractor. In the event of loss or damage to the Plant, the Customer shall indemnify the Contractor in respect of hire charges for the Plant until liability for such loss or damage has been settled between the Contractor and the supplier of the Plant.

#### **13. Intellectual Property Rights**

- (a) Unless agreed otherwise in writing by both Contractor and Customer:
  - (i) any design, drawing, specification or other document (in written or electronic form) prepared or produced by the Contractor shall remain the exclusive property of the Contractor; and
  - (ii) the Customer shall not disclose any design, drawing, specification or other document (in written or electronic form) prepared or produced by the Contractor to any third party.
- (b) The Customer agrees to indemnify the Contractor in respect of any claim for infringement of any intellectual property right arising from the installation by the Contractor of any equipment supplied by the Customer.

#### **14. Force Majeure**

In the event of war, invasion, act of foreign enemy, hostilities (whether war has been declared or not), civil war, rebellion, revolution, military or usurped power, act of God, force majeure, epidemic or any other matter or occurrence beyond the control of the Contractor or the failure on the Part of the Customer to make due and timely supply of all materials and/or data and specifications as may be required and agreed as terms of the acceptance of any order by the Contractor, the Contractor shall be relieved of all liabilities incurred under the contract wherever and to the extent to which the fulfilment of such obligations is prevented, frustrated or impeded as a consequence of any such event or by the Statute Rules regulations Orders or Requisitions issued by any Government Department Council or other duty constituted authority or from strikes, lock-outs or other withdrawal of labour force, breakdown of plant or any other causes (whether or not of a like nature) beyond the Contractor's control.

#### **15. Law and Jurisdiction**

- (a) The contract is deemed to be made under and in accordance with English law.
- (b) Any dispute under the contract shall be subject to the exclusive jurisdiction of the Courts of England and Wales