

General Terms & Conditions
(to be read in conjunction with the Proposal)



The Contract for the services and goods/materials ("the Services") to be provided by Scotts UPS Power Protection Ltd ("SUPP") shall comprise the proposal (including any documentation or drawings referred to in the proposal) submitted by SUPP ("the Proposal") as agreed and accepted by the named party on the Proposal ("the Customer") together with the General Terms & Conditions ("the Conditions") as set out below which together shall comprise the contract (" the Contract").

The Proposal shall consist of the details of the Services to be provided including the work to be carried out, the materials to be supplied, the price, any drawings, specification and any ancillary information relating to the Services.

So far as the law permits, all terms of the Contract between the Customer (and/or its delegated representatives) and SUPP are contained in the Proposal and these Conditions and no variations shall be relied upon unless agreed by SUPP in writing. In the event of any ambiguity or inconsistency between the Proposal and the Conditions the general rule shall be that the Conditions shall take precedence save where it is specifically expressed in the Proposal that such terms varying these Conditions shall prevail.

These Conditions in all circumstances override any terms or conditions proposed by the Customer at any time whether in any order or in any negotiations or otherwise.

All liability for any representations, whether oral or in writing, and all other conditions or warranties, whether express or implied, are hereby excluded in so far as such exclusion may be permitted by law.

The Proposal is subject to acceptance by SUPP on receipt of an order from the Customer. SUPP may reject an order based on the Proposal unless received within thirty days of the Proposal.

1. DRAWINGS

Any plans, drawings, specifications and samples submitted by SUPP in the Proposal (or any variations thereto agreed by the parties after the Proposal has been agreed) ("the Drawings") are the property of SUPP to be used by SUPP and the Customer only for the purpose of the Contract. The copyright in the same shall remain with SUPP and shall not be used or copied by the Customer save solely in connection with the Contract work. Plans, drawings and specifications prepared by an architect or other agent of the Customer shall remain the property of the Customer. In case of any discrepancy between the drawings and specifications, the drawings shall prevail unless otherwise expressly agreed in writing by the parties.

2. TECHNICAL & SUPPORT LITERATURE

It is a requirement that any necessary support literature to carry out the Services without exception become due for final issue no later than 28 days subsequent to the first date of issue of each or any revision of literature which shall be submitted in a form consistent with accepted industry practice at the time of submission. Any subsequent alterations shall be so directed by the Customer and/or his delegated representative and in every instance be reimbursable to SUPP at the standard day work rates applicable at the time.

3. CANCELLATION

The Customer may not cancel the Contract unless agreed by a Director of SUPP in writing. In the event of cancellation the Customer will fully indemnify SUPP against all costs and expenses incurred at the time of cancellation and secondly against any loss including any loss of profit to SUPP which arises directly, or indirectly, as a result of the cancellation.

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4. MATERIALS

Unless SUPP has provided to the Customer written advice as to the suitability of any materials to be used in the provision of the Services, SUPP does not warrant that the materials specified by the Customer, and which are itemised in the Proposal, will be fit for the Customer's purpose. SUPP will endeavour to match materials which vary in figure and colour but samples are submitted as a fair example only of the bulk. Any existing materials on any site replaced by new materials will become the property of SUPP unless agreed otherwise in writing.

5. DESIGN

Should the Customer agree a design with SUPP by way of drawing prepared by SUPP, SUPP's production of the design in accordance with the agreed drawing shall be accepted by the Customer as provision by SUPP of such design ("the Design") in accordance with the Customer's requirements and SUPP shall have no liability for any defects in the Design approved by the Customer other than in the event of proven negligence on the part of SUPP in the production of the Drawings.

6. IMPRINTS

SUPP may write on or affix their imprint to the work carried out. If SUPP's patents, trademarks or copyright features are embodied in the design, an imprint to that effect may be affixed.

7. FACILITIES

- 7.1. The Customer shall provide on-site without charge, water and electricity whilst the Services are being carried out together with facilities for the storage of plant and materials necessary for carrying out the Services and any ancillary facilities required for that purpose.
- 7.2. Where required, the Customer shall remove all existing fittings from the site and ensure that the site is suitably prepared for the provision of the Services. Any expense incurred by SUPP in removing fittings or preparing the site so as to allow the Services to be provided may be charged to the Customer.
- 7.3. The Customer shall provide on-site all equipment and facilities necessary for SUPP to comply with the requirements of The Health and Safety at Work Act 1974 and any other relevant statutory provisions or regulations or subsequent amendments thereto (hereinafter "the relevant legislation"). The Customer will also upon request from SUPP provide a certificate confirming compliance with the relevant legislation.

8. PRICE

- 8.1. This price as set out in the Proposal (which is net of VAT unless otherwise stated) and does not allow for any discount, except such as may be expressly specified. Unless the Contract is expressed to be a fixed price, the price in the Proposal is based on current prices of materials, wage rates as nationally agreed, employment conditions, insurance and other statutory liabilities. Any fluctuation of costs incurred shall be paid in accordance with NEDO formulae or as otherwise set out by SUPP in the Proposal. No account has been taken of any restriction of hours of facilities of any nature which may occur due to industrial action, or site agreements unless SUPP has been an involved party prior to this Proposal. The price may be increased to allow for any changes which occur to the aforementioned items, either before the commencement of the work or during its progress. SUPP shall provide evidence of such changes if required by the Customer.
- 8.2. SUPP reserves the right to increase the price if it incurs loss or expense which was not provided for in the Proposal (even if a fixed price Contract) brought about by delays or interruptions caused

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by any matter beyond SUPP's control including but not limited to the following circumstances which may give rise to an increase in the price:

- a) lack of information from the Customer;
- b) delays in the issue of written instructions from the Customer;
- c) any form of alteration to the fixed works;
- d) reprogramming of other trades;
- e) uneconomical working conditions;
- f) out of sequence working;
- g) loss of production through no fault of SUPP;
- h) additional works to those specified in the Proposal including, but not limited to, any changes in the Drawings or Design.
- i) Any provisional sum/items withdrawn and/or not expended subsequent to submission of the Proposal will carry a maximum loss of profit value of 10% which will constitute a variation to Contract and will be invoiced accordingly.

8.3. The price may be varied because of any change in the specifications arising from a change in the Customer's instructions or requirements of the Local Authorities or surveyors or any other competent authority.

8.4. Additional work shall be charged at SUPP's prevailing rates for material and labour plus profit. SUPP shall provide a new Proposal for the Additional Works if requested to do so by the Customer.

9. VARIATIONS

If the Contract is not expressly stated to be a fixed price Contract, variations to the Services will be subject to an overheads profit and attendance figure.

10. OVERTIME

Overtime necessary for the satisfactory completion of the Contract as set out in the Proposal (even if a fixed price Contract) is included, but the price may be increased because of any premium time brought about by factors outside the control of SUPP or which was as a result of a request by the Customer in order to complete the work before the agreed stated date of completion as in the Proposal or prior to the commencement of the Services.

11. PROGRESS APPLICATIONS

- 11.1. SUPP may raise an invoice for the Services in full upon substantial completion alternatively during the course of the work, submit progress applications as from time to time completed in accordance with the Proposal. The progress applications shall include any amounts due for any Services provided in addition to those as set out in the Proposal.
- 11.2. Payment will be due within 30 days of the submission of the progress application and if payment becomes overdue SUPP shall be entitled to charge interest on the overdue payment at the rate of 3% per month above base rate providing always that payment of such interest shall be in addition to all other rights of SUPP.
- 11.3. Upon placing an order with SUPP unless expressly agreed in writing by SUPP the Customer shall make immediately payable to SUPP an amount equal to twenty per cent or other such percentage agreed in writing of the Contract / order value or anticipated value known at that time.

12. DEFAULT OF THE CUSTOMER

- 12.1. If the Customer fails to pay any sum when it becomes due, SUPP shall have the right, but without prejudice to any other rights or remedies, to suspend further work until payment is received with interest at the rate specified at condition 22 or to cancel the Contract so far as any Services

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remain to be provided in which case the Customer will indemnify SUPP in accordance with condition 3 above.

- 12.2. If the Customer shall make default in or commit any breach of any of his obligations to SUPP, or if any distress or execution shall be levied upon the Customer, his property or assets, or if the Customer shall make or offer to make any arrangement or composition with Creditors or commits any act of bankruptcy, or if any petition for bankruptcy shall be presented, or if the Customer shall be a limited company and any resolution or petition to wind up the Customer's business or for the appointment of an Administrator shall be passed or presented otherwise than for reconstruction or amalgamation, or if an Administrative Receiver of such company's undertaking property or assets or any part thereof shall be appointed, SUPP may determine the Contract by written notice to the Customer's registered office address or otherwise as set out in the Proposal, without prejudice to any claim or right SUPP might otherwise have.

13. GUARANTEE

SUPP will rectify, without charge, any defects arising from faulty materials or workmanship if notice of any such defect is given in writing by the Customer to SUPP within 12 calendar months of the date of completion of the Services. When defects are rectified under this condition SUPP will undertake a further liability in respect of the rectified work for a period of 6 months commencing from the date of such rectification. This guarantee does not apply to damage to work on site arising from fire, flood, excessive damp, humidity or heat or other causes operating before, during or after completion of the work which are beyond SUPP's control. SUPP excludes from this guarantee any goods or materials, parts of goods or materials which have not been manufactured by SUPP. With respect to such goods or materials, the Customer shall be entitled to an assignment of any rights obtained by SUPP under SUPP's contract to purchase the said goods or materials.

14. LIABILITIES

14.1. SUPP shall not be liable for:

- a) Loss or delay resulting from strikes, lockouts, force majeure or any Government controls or restriction of which SUPP had no prior knowledge.
- b) Damage to glass or other materials after being fixed into position.
- c) Damage to existing glass or other materials on the site not the property of SUPP.
- d) Breakage and damage when handling existing glass or other materials not the property of SUPP.
- e) Damage to stock, merchandise, fixtures, fittings or goods on the site not the property of SUPP.
- f) Damage to or defects in the work as set out in Condition 5 or through causes beyond SUPP's control.
- g) Damage caused by accidental fire.
- h) Any consequential or indirect loss suffered by the Customer whether this loss arises from breach of duty in contract or tort or in any other way.
- i) Loss or delay due to industrial action by any party howsoever incurred.
- j) Materials, workmanship or surfaces to which decoration is applied.

14.2. Nothing in this agreement shall limit or exclude the liability of either party for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- b) fraud or fraudulent misrepresentation or wilful default; and
- c) any matter for which it would be unlawful to exclude or restrict liability.

14.3. Subject to Conditions 14.1 and 14.2:-

- (a) Neither party shall save as otherwise provided for in these Conditions be liable to the other, whether in contract, tort (including negligence), equity (including restitution), breach of statutory duty, or otherwise, for:

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- (i) any loss of profit, loss of revenue, loss of use, loss of goodwill, loss of data, loss due to interruption of business, or loss of anticipated savings, whether direct or indirect, and even if the party has been advised of the possibility of such losses or damages;
- (ii) any loss that is an indirect consequence of any act or omission of the other party;
- (b) the total liability of either party for damage to property caused by the negligence of its employees in connection with this agreement shall be limited to £1,000,000 for any one event or series of connected events; and
- (c) the total liability of either party to the other in respect of all other uninsured loss or damage arising under or in connection with this agreement, whether in contract, tort (including negligence), equity (including restitution), breach of statutory duty, or otherwise, shall in no circumstances exceed £500,000 for the Contract or the value of the Contract, whichever is the lower.

15. MATERIALS STORED OFF SITE

SUPP shall be entitled for payment for goods and materials procured against the Customer's order and retained by SUPP on SUPP's premises or the premises of a third party. Any such items shall upon request be labelled the property of the Customer. If commencement or any part or phase of the Contract is delayed for any reason and SUPP has purchased materials for the Contract, SUPP may apply for payment of materials stored off site and payment will be made by the Customer within 30 days of the Company's application. SUPP shall be entitled to payment for storage of materials on SUPP premises for the duration of any such delay the rate chargeable to the Customer shall be based on a charge per square foot or metre but shall not exceed the market rate for similar storage facilities in the immediate vicinity.

16. SUSPENSION OF SERVICES

The Services may be partially or wholly suspended upon notice given by SUPP in circumstances where the Services cannot be continued by reason of force majeure or as a consequence of any actions taken by the Customer. The time of any suspension shall be added to the time of completion of the original Contract, and any additional costs incurred will be the subject of a variation to the Contract. In the event of the Customer's premises being destroyed or substantially damaged by fire, the Customer shall be at liberty to terminate the Contract upon paying SUPP for the Services provided on a quantum merit basis.

17. RIGHTS TO SUBCONTRACT

SUPP shall be entitled to employ a sub-contractor to carry out all or part of the Services included in the Proposal.

18. COMPLETION

SUPP shall use all reasonable endeavours to complete the Services within the agreed time, but any time period given shall be an estimate only and time shall not be of the essence (save unless otherwise stated in the Proposal). SUPP shall not be liable to make good any damage or loss whether arising directly or indirectly out of any delay in completion of the Services. The Customer shall not be entitled to cancel or determine an order on the basis of delay unless specifically agreed by SUPP in writing that time is of the essence.

19. RISK

Upon delivery of any goods to site (excluding the plant and tools of SUPP) risk in such goods shall pass to the Customer who shall be solely responsible for the same and shall insure the goods accordingly.

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20. PASSING OF PROPERTY

- 20.1. Without prejudice to any of SUPP's other rights notwithstanding delivery of any goods the property/title in the goods shall remain in SUPP until the Customer has paid in cash in full therefor. If the price is payable by instalments or part only of the price has been paid to SUPP, SUPP may appropriate the payment to any part of those goods which have been so delivered and title to that part shall thereupon pass.
- 20.2. If such payment is overdue in whole or in part SUPP may (without prejudice to any of its other rights) recover and dispose of the goods or any of them and may enter upon the Customer's or third parties premises for the recovery of such goods.
- 20.3. If any of the goods are incorporated in other goods or materials before such payment the property in the goods delivered by SUPP shall nevertheless be and remain with SUPP until such payment has been made.
- 20.4. The Customer agrees to deal with all goods supplied by SUPP in such a way that they are readily identifiable as the property of SUPP and all due diligence shall be taken by the Customer to protect the property against damage or loss.
- 20.5. Where any goods delivered under this Contract have been sold by the Customer then the Customer shall also sell as agent for SUPP and shall be trustee for SUPP of the proceeds of sale thereof until such time as SUPP shall have been paid in full for such goods.

21. NOTICES

Any notices to be given under these terms and conditions shall be in writing and shall be deemed to have been duly given if sent or delivered by recorded delivery post to SUPP at the address specified overleaf.

22. PAYMENT TERMS

Unless specified otherwise in the proposal or as otherwise agreed in writing by both partners, payment of all invoices shall be 30 days after the date stated on the invoice. If payment is overdue, SUPP shall be entitled to charge interest on the overdue payment at the rate of 4% per month above base rate from the date of the account provided always that payment of such interest shall be in addition to all other rights of SUPP.

23. INSURANCE

Both SUPP and the Customer shall provide and maintain all relevant insurances with a reputable insurer within England and Wales against all insurable risks arising under the Contract and shall upon reasonable request provide either party with a copy of the insurance policy and any schedules relating thereto.

24. VAT

This quotation does not include VAT. The Customer will be required in addition to pay such VAT as may become chargeable thereon at the standard rate applicable at the date of any tax invoice submitted in accordance with these terms and conditions.

25. DISPUTES

- 25.1. In the event of any dispute the parties shall use all reasonable endeavours to resolve any issue relating to the Contract. If the dispute relates to any design or build services provided by SUPP and is incapable of being resolved, the parties shall consider mediation as an appropriate means of dispute resolution but failing mediation or if otherwise the parties do not consider mediation is appropriate the parties agree to proceed by way of adjudication (unless otherwise agreed by

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both parties) to be determined by an adjudicator agreed by the parties or in the event of the parties failing to agree, an adjudicator appointed by the President for the time being of the Royal Institute of Chartered Surveyors in England whose decision shall be final and binding save in the event of manifest error.

25.2. The Contract shall be interpreted in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts in England .

26. ASSIGNMENT

Neither party shall assign or transfer the benefit and/or burden of the Contract to any third party (including to an associated company or affiliate) without the prior written consent of the other party such consent not to be unreasonably withheld.