

**Terms and Conditions for Supply of Subcontractor – Scotts UPS Power
Protection Ltd (to be read in conjunction with Purchase Order to
Subcontractor)**

BACKGROUND

Scotts UPS Power Protection Limited (SUPP) has entered into an agreement with its customer ("the Customer") for the supply of services and related products which require certain support services (and materials) from the Subcontractor which the Subcontractor has agreed to supply in accordance with the provisions set out below.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions below shall apply in this agreement.

Customer Agreement: an agreement between SUPP and the Customer for services and products, the particulars of which are as set out in the Purchase Order.

Purchase Order: the order or agreement (in whatever form) for the Subcontractor Services issued under the terms of this agreement which may include but not be limited to:-

- the goods/materials and services to be supplied;
- the charges for the Subcontract Services and payment terms;
- start and finish dates and times when the Subcontract Services are to be provided;
- relevant details of any Customer Agreement (including, but not limited to, details of the Customer Data Centre);
- any Special Conditions.

Rules and Guidelines: the general rules and guidelines provided by SUPP which the Subcontractor must adhere to whilst providing the Subcontract Services.

Site: the premises or location where the Subcontractor provides the Subcontract Services.

Subcontract Services: the goods and services to be provided by the Subcontractor as more specifically set out in the Purchase Order.

1.2 Each contract between SUPP and the Subcontractor comprises these terms together with the relevant Purchase Order. In the event of any ambiguity the terms of the Purchase Order shall apply.

2. CHARGES FOR SUBCONTRACT SERVICES

2.1 Subject to clause 2.2 SUPP shall pay to the Subcontractor as full consideration for the performance of the Subcontract Services under this agreement, such amounts on such terms as set out in the Purchase Order.

2.2 SUPP shall pay the Subcontractor any amounts due to the Subcontractor within 30 days of date of invoice, unless otherwise stated in the Purchase Order or otherwise at such time as payment is received by SUPP from the Customer in the event of any dispute as to the Subcontract Services provided by the Subcontractor.

2.3 SUPP may set-off against any invoice any monies due from the Subcontractor to SUPP including any deductions made by the Customer relating to the Subcontract Services.
Provision of Subcontract Services

2.4 The Subcontractor shall perform the Subcontract Services with all due skill and care and in a timely fashion in accordance with the terms of this agreement the Purchase Order the Rules & Guidelines and in accordance with any further instructions as may be provided by SUPP or the Customer from time to time.

2.5 The Subcontractor shall at all times comply with any applicable statutes, rules or regulations applicable to the provision of the Subcontract Services and the Site.

2.6 The Subcontractor shall at all times comply with all health and safety regulations applicable to the Site, together with any specific instructions provided by SUPP or the Customer relating to the Site.

2.7 The Subcontractor shall at all times maintain insurance, which shall include Public Liability, Employer's Liability and Professional Indemnity insurance of not less than £1,000,000 (one million pounds) per event (or series of events) or otherwise as set out in the Special Conditions on the Purchase Order. The Subcontractor shall provide to SUPP satisfactory evidence of the insurance cover maintained as required under this agreement.

2.8 The Subcontractor shall not make any changes to the work required under the Purchase Order without first notifying SUPP of such changes. For the avoidance of doubt, such work which is

2.9 carried out without such approval may not be paid for by SUPP. In the event the Subcontractor subcontracts out any Subcontract Services to a given third party, such third party must be approved by SUPP, such approval being given on the basis that the Subcontractor shall take full responsibility for such works and materials provided by the third party which shall be treated as part of the Subcontract Services.

3. INDEMNITY FROM SUBCONTRACTOR AND DISPUTES

3.1 The Subcontractor shall indemnify the SUPP against all losses, claims, demands, costs and expenses incurred or suffered by SUPP including all claims by the Customer (whether direct or indirect losses suffered by the Customer) against SUPP howsoever arising out of the provision of the Subcontract Services by the Subcontractor pursuant to this agreement.

3.2 SUPP shall give to the Subcontractor notice in writing as soon as practicably possible after it becomes aware of any dispute between SUPP and the Customer arising out of the Customer Agreement relating to the Subcontract Services.

3.3 SUPP shall unless otherwise agreed with the Subcontractor deal with any disputes that arise between SUPP and the Customer arising out of the Customer Agreement relating to the Subcontract Services and shall control and pay for any litigation, arbitration, mediation, adjudication, expert determination or other dispute settlement procedure in which SUPP might be involved as a result of entering into this agreement and the Customer Agreement. The Subcontractor shall fully indemnify SUPP against all costs and expenses incurred pursuant to this clause arising out of any dispute relating directly or indirectly to the Subcontractor Services.

3.4 In the event that the Subcontractor fails to complete the Subcontract Services or the Subcontract Services are not completed to the satisfaction of SUPP and/or the Customer SUPP may require the Subcontractor to make good the work or may otherwise engage an alternative subcontractor, additional costs and expenses of completing the work to be paid for by the Subcontractor subject to such amount not exceeding 150% of the price charged by the Subcontractor for the Subcontract Services

4. LIMITATION OF LIABILITY

4.1 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.

4.2 Save as provided for in clause 4.4, nothing in this agreement shall limit or exclude the liability of the Subcontractor for any liability incurred by SUPP to the Customer under the Customer Agreement arising out of any act or omission of the Subcontractor in the provision of the Subcontract Services in respect to which the Subcontractor shall fully indemnify SUPP, save where such liability arises out of any negligence or fraud on the part of SUPP or any third party acting on its behalf.

4.3 Subject to clauses 5.1 and 5.2:-

- (a) 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
- (b) 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 work carried out under each Purchase Order.

4.4 SUPP shall not be responsible to the Subcontractor for any failure to perform its obligations under this agreement where there is a corresponding failure by the Customer to perform its obligations under the Customer Agreement, provided that SUPP takes all reasonable steps to pursue its rights under the Customer Agreement.

5. EFFECTIVE DATE

The Contract for the Subcontract Services shall have legal effect save unless otherwise stated on the Purchase Order from the date of acknowledgement of receipt of the Purchase Order by the Subcontractor or when the Subcontractor starts work, whichever is the earlier.

6. TERM AND TERMINATION

6.1 This agreement shall be effective from the Effective Date and shall continue in force until the parties have discharged all their obligations under the relevant Purchase Order unless:

- (a) the Customer Agreement is terminated for any reason, in which case the contract shall terminate immediately and automatically, without further action being necessary by the parties, and subject to all the rights of the parties accrued up to the date of termination; or
- (b) the contract is terminated by one of the parties under clause 7.2.

6.2 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any material term of this agreement including in the case of the Subcontractor any material breach or continuous breaches of the Rules & Guidelines and (if such breach is remediable, including late or non-payment) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) 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 other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) 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);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) 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;
- (j) 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 the other party's assets and such attachment or process is not discharged within 14 days;
- (k) 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 6.2(d) to clause 6.2(j) (inclusive);

- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (m) there is a change of control of the Subcontractor (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- (n) any warranty or representation given by the Subcontractor is found to be untrue or misleading.

6.3 SUPP shall be entitled to terminate the contract for convenience at any time on not less than 1 month's written notice to the Subcontractor.

7. CONFIDENTIALITY

The Subcontractor shall at all times during the contract and at any time thereafter ensure that any confidential information provided relating to the Customer or the Customer site where the Subcontractor is working remains confidential and any material provided by SUPP or the Customer to carry out the Subcontract Services is returned to SUPP when the work is completed or destroyed at the direction of SUPP.

8. NON-DEALING

8.1 The Subcontractor agrees that it shall not directly or indirectly approach, solicit or provide the same or similar services to any Customer for which it has carried out the Subcontract Services through SUPP during the contract or for a period of 6 months after the contract has finished. The Subcontractor acknowledges and accepts such restriction is reasonable to protect DCR's business. Such restriction in clause 9.1 shall not apply to any Customer for whom the Subcontractor has provided the same services prior to entering into a contract with SUPP for the supply of the Subcontract Services under a Contract with SUPP.

9. FURTHER ASSURANCE

Each party shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

10. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

11. THIRD PARTY RIGHTS

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

12. NO PARTNERSHIP

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

13. NOTICE

Any notice given under this Agreement shall be in writing and if given by email, should be confirmed by way of letter sent by first class post.

14. GOVERNING LAW AND JURISDICTION

14.1 This agreement 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, the law of England and Wales.

14.2 The parties to this agreement irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated on the Purchase Order.