

STANDARD CONTRACT –PROVISION OF CONSULTANCY AND TECHNICAL SERVICES

Terms and Conditions – Consultancy and Technical Services

1. Definitions

Acknowledgement means EPS's (Engineering Power Solutions Limited) written acknowledgement of Client's Order, confirming supply of the Services subject to these terms and conditions.

Client means the party to whom the Proposal is addressed.

Contract means the written agreement between EPS and Client for the supply of Services which incorporates in order of precedence: the Acknowledgment (if applicable), these terms and conditions, the Proposal and the Order (excluding any terms and conditions contained therein).

Contract Price means the total price of the Services.

Deliverable(s) means any products, reports, results, designs or other items to be provided to Client resulting from the Services.

EPS means the supplier of the Services: Engineering Power Solutions Limited whose registered address is EPS House, 18 Binchester Court, Stockton-on-Tees, Ingleby Barwick, TS17 5LY, England.

EPS Employees means employees, consultants and subcontractors of EPS.

IPR means all patents, trademarks, trade/business names, copyright, rights in designs, database rights, software rights, trade secrets, rights in know-how and confidential information and all intellectual property rights (whether or not registered), together with rights to apply for any of these globally.

Order means Client's purchase order, Proposal acceptance, request to proceed or other communication requesting the supply of Services.

Proposal means EPS's written quotation or tender inviting Client to place an Order.

Services means any services to be supplied by EPS under the Contract.

2. Work Execution

- 2.1. EPS shall execute the Work in a professional manner and in accordance with the provisions of this Agreement. All warranties and conditions not set out in this agreement whether implied by statute or otherwise are excluded to the maximum extent permitted by law.
- 2.2. The Customer shall ensure that EPS without undue delay receives all relevant information and documentation.
- 2.3. Any documented error in the Work will be rectified by EPS within a reasonable period of time at EPS's sole cost, provided said error is not attributable to the Customer or Customer's subcontractor and EPS is duly notified of said errors within six months after completion of the Work.

3. Safety, Health and Environment (SHE)

- 3.1. The Customer shall inform EPS of any real or

potential SHE hazard which may be relevant to or involved or introduced in the Work and/or any necessary safety measures required for the Work, prior to or during the performance of the Work.

- 3.2. Whenever EPS undertakes work on site, the Customer shall provide all adequate safety measures to ensure a working environment that is safe and in accordance with all relevant legislation and to ensure that the risks that cannot be eliminated are controlled at a tolerated level.
- 3.3. EPS has the right to refuse to carry out an activity, when the safety, according to his/her own judgement, is not satisfactory.

4. Remuneration

- 4.1. EPS shall invoice Client in accordance with the payment plan set out in its Proposal or, if none, monthly. The Customer shall pay EPS for the Work, as specified in this Agreement. Payment shall be made to EPS's bank account as stated on the invoice unless otherwise specified in this Agreement.
- 4.2. To the extent that payments to be made under the Work attract value added tax and/or withholding tax and similar taxes and levies, EPS shall issue to the Customer a proper value added tax and/or withholding tax invoice, which shall detail separately the proper amount of such value added tax and/or withholding tax and similar taxes and levies payable. Value added tax and/or withholding tax and similar taxes and levies shall be added to the invoice as appropriate.
- 4.3. Payment shall be made within 30 days in the currency invoiced after the date of the invoice.
- 4.4. In the event of late payment(s), EPS shall be entitled to:
 - (i) charge interest at the rate of 8% per annum calculated on a daily basis until payment is received in clear funds, and recover any administrative costs, or the highest permitted interest according to the law designated in article 10.1, if this rate is lower;
 - (ii) suspend further Services with no liability to Client as a result of such suspension. Client shall be liable to pay EPS's costs of such suspension.
- 4.5. EPS may require an upfront payment or irrevocable letter of credit, and shall not be obliged to commence the Services until this is received.

5. Delivery and Title

- 5.1. EPS shall endeavour to achieve any agreed dates for performance or delivery, but all such dates are estimates only and EPS shall have no liability to Client in the event of failure to achieve such dates.
- 5.2. Unless stated otherwise in the Proposal, the Contract Price is based on Services carried out within EPS's usual business hours and on EPS's premises.
- 5.3. EPS may vary or cancel the Contract if EPS is unable to proceed as anticipated through unavailability of equipment, personnel or other reason.

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- 5.4. Unless Client provides EPS with notice within 7 days of receipt of a Deliverable, Client shall be deemed to have accepted the Deliverable.
- 5.5. Notwithstanding delivery, title in any Deliverables shall not pass to Client until payment of the Contract Price has been received by EPS together with all other sums which are or become due from Client.
- 6. Variations and Change in Law**
- 6.1. The Customer shall be entitled to request additional work (hereinafter referred to as "variations") under this Agreement.
- 6.2. All variation requests shall be in writing, clearly defining the variation required, including but not limited to remuneration and time schedule.
- 6.3. No variation shall be implemented before the parties have reached an agreement regarding the extent and the remuneration hereto and the revised time schedule and the variation is signed by both parties in written.
- 6.4. If a change of law comes into effect after the commencement date that in anyway whatsoever effects either the price of the Work or the timetable the Work is due to be delivered in, then the fees will be increased so as to put EPS into the position they would have been had the change in law not occurred or and the timetable will be revised to take account of the change of law.
- 7. Termination**
- 7.1. Each party shall have the right to terminate this Agreement at any time upon 30 days written notice to the other party.
- 7.2. In the event of termination according to article 5.1 above, the Customer shall reimburse EPS for all Work performed up to the date of termination and all costs and expenses reasonably incurred by EPS as a consequence of such termination.
- 7.3. Both Customer and EPS shall have the right to terminate this Agreement with immediate effect if the other party is in material breach of its obligations hereunder and fails to correct the material breach within 30 days written notice from the other party specifying the breach or, if the other party goes bankrupt or enters into liquidation proceedings.
- 8. Confidentiality**
- 8.1. The Customer and EPS mutually agree not to disclose to any third party without the prior written consent of the other party, any information obtained from the other party related to this Agreement.
- 8.2. However, each party shall be free to disclose such information as is:
- known by it prior to the information being disclosed by the other party, or
 - part of the public domain at the time of disclosure, or
 - required to be disclosed by public authorities or a regulated stock exchange in accordance with applicable law.
- 8.3. Both parties may disclose information to their subcontractors without prior written consent to the extent necessary to complete the Work, provided that a written confidentiality agreement reflecting the principles above is entered into with such subcontractors.
- 8.4. The obligations of both parties as defined in this article shall apply notwithstanding the completion of the Work or termination of this Agreement.
- 9. Intellectual Property Rights and License**
- 9.1. The Customer shall have full ownership rights to the deliverables developed by EPS as part of the Work, unless otherwise specified. EPS shall, subject to this Agreement on a royalty free basis, have free use of such deliverables.
- 9.2. Any writings (including but not limited to photographs, diagrams, models and computer programs) developed during the course of the Work, which are not part of the deliverables, shall be the exclusive property of EPS.
- 9.3. Notwithstanding the above, both parties agree that any intellectual property right (either registered or not) in existence prior to this Agreement, shall remain the sole property of the originating party.
- 9.4. Any software provided to Client under the Contract shall, subject to the rights of third parties, remain the property of EPS and use thereof by Client shall be subject to the terms of EPS's applicable software licence and any third party software licence.
- 9.5. If the Services include any modelling, simulation or software modelling, all Deliverables and other items produced as a result of Services shall be the exclusive property of EPS. Any software used by EPS, shall be for EPS Employees use only and shall remain EPS's exclusive property.
- 9.6. Any customised protocol shall remain the intellectual property of EPS and if customised protocols are part of the deliverables under the Service, a separate licensing agreement shall be executed.
- 10. Client Obligations**
- 10.1. Client shall provide EPS with access, free of charge, to its personnel, premises, transport, accommodation, office facilities, suitable storage space for EPS's equipment, documentation, data, information and any other material as set out in the Proposal or otherwise upon the reasonable request of EPS.
- 10.2. EPS shall not be liable in respect of any damage to Client provided material which occurs as a result of the proper performance of the Contract by EPS.
- 10.3. Following completion of the Services under the Contract, or upon EPS's request, all Client provided materials and equipment shall be collected from EPS within a period of 2 months. If not collected, EPS shall be entitled to give Client 1 month's written notice after which EPS shall have the right to dispose of the materials and equipment by sale or otherwise. Client shall be liable to EPS for all reasonable storage and disposal costs (less the sum of the proceeds from any sales made).
- 10.4. Where meetings are requested by EPS, Client shall make the correct people (with decision-making

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authority) available to attend on a timely basis.

- 10.5. Where EPS requests accurate information and this is not provided in a timely manner by Client, EPS may make assumptions based on its own knowledge. Any assumptions shall be documented and where appropriate agreed with Client. EPS shall not be held liable for any delay or error caused by relying upon an assumption.
- 10.6. Client undertakes to provide a suitable and safe working environment for EPS Employees. EPS Employees shall observe Client's reasonable site regulations, as notified to EPS.
- 10.7. Client shall obtain all export/import licences, visas or other consents required, or where required to be applied for in EPS's name, Client shall provide assistance where required. Any delay or denial of such consents shall be subject to clause 11.
- 10.8. Client shall indemnify EPS from any and all claims and losses, including but not limited to claims made by a third party, which arise as a result of the wilful, reckless or negligent act or omission of Client or its employees, agents or subcontractors or as a result of any breach by Client or its employees, agents or subcontractors of any of its obligations under the Contract.
- 10.9. Client warrants that no bribes (as defined under the Bribery Act 2010 and similar legislation including but not limited to the US Foreign Corrupt Practices Act, the UK Anti-Terrorism, Crime and Security Act 2001 and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention Against Corruption) have been or shall be offered to, paid to or received from any party or third party in connection with this Contract. Client warrants that no other offences have been or shall be committed in connection with this Contract. Client warrants that it has proper procedures and policies in place in compliance with the Bribery Act 2010 and similar legislation.

11. Warranty

- 11.1. Services shall be provided by such EPS Employees as EPS considers suitable to undertake the work. EPS warrants that Services shall be undertaken using reasonable skill and care and any Deliverables generated as a result shall be free from material errors or omissions, subject to:
- (i) Quality and accuracy of the information and/or materials provided by Client;
 - (ii) Correct installation and maintenance in respect of any design Deliverable;
 - (iii) If materials provided by Client for analysis are in a damaged state it cannot be guaranteed that the Services provided shall achieve a fully accurate diagnosis or end result. However, EPS shall use reasonable endeavours to produce as accurate a diagnosis as the evidence permits;
 - (iv) Electromagnetic Compatibility (EMC) Services rely upon the conditions at the time of any measurement surveys undertaken. EPS therefore cannot guarantee EMC for all possible operational conditions. If an EMC issue is apparent, EPS may

suggest how a mitigation or remedy might be successful to reduce risks to as low as reasonably practicable but cannot guarantee successful mitigation or remedy. If specialist screening is required, Client is advised to employ a specialist contractor to validate and/or undertake such remedial measures;

(v) For distribution of newsletters, updates or similar information, EPS shall take reasonable care to ensure the information contained is accurate. However, EPS relies on third party sources and therefore, does not warrant or represent that such information is complete or free from errors or inaccuracies.

- 11.2. EPS's liability is limited to the provision of Services of the same nature as those originally provided to correct errors or omissions, subject to notice being given by Client within 3 months from completion of Services.

12. Liability and Indemnity

- 12.1. The Customer shall indemnify, defend and hold EPS harmless from all losses, costs and expenses incurred by EPS as a consequence of a failure of the Customer to fulfil its obligations according to article 1.2 above.
- 12.2. EPS shall in no circumstances be liable for: (i) any indirect, special or consequential loss; (ii) loss of profits; (iii) loss of business; (iv) loss of product; (v) loss of use; (vi) loss of contract; (vii) loss of goodwill; (viii) punitive and/or exemplary damages; even if such loss was or should have been in EPS's contemplation upon entering the Contract.
- 12.3. Subject only to clause 13.3, The Customer and EPS shall mutually indemnify, defend and hold each other harmless from and against any and all losses, claims and liabilities related to or arising from this Agreement as a result of:
- a) death of or personal injury to any of its own employees, representatives or subcontractors,
 - b) the loss of or damage to any of its own property or employees, representatives or subcontractors,
 - c) fraudulent misrepresentation.
- 12.4. Client is advised to insure against any losses excluded or limited by clause 11.
- 12.5. However caused, this applies regardless of any form of liability, whether strict or by negligence, in whatever form.
- 12.6. Notwithstanding the terms and conditions contained herein (but subject always to clause 8.2 to which no limit applies), the total cumulative liability under this CONTRACT of EPS Limited whether for delay, default, re-work or re-performance and otherwise and whether or not such re-work or re-performance is carried out by others, shall not exceed the total cumulative value of this CONTRACT or the total cumulative value of each individual Work Order issued under the Contract where Work Orders are issued.
- 12.7. Such limitation in liability shall apply, under this agreement, in tort, negligence, statute, equity or otherwise at law. Notwithstanding the foregoing, such

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limitation in liability shall also apply to any of the indemnities given by EPS Limited under this Contract

12.8.If either party becomes aware of any incidents likely to give rise to a claim under the above indemnities, he shall notify the other party immediately.

12.9.Neither Party shall be liable to the other for any Consequential Loss.

12.10. For this agreement Consequential Loss shall mean any direct or indirect loss of profit, loss of anticipated savings, loss of reputation, loss of production, loss of revenue and any indirect/consequential loss whatsoever caused or occasioned to the other party arising out of or in connection with the performance of this agreement.

13. Force Majeure

13.1.Delay in or failure of performance of either party hereto shall not constitute a default hereunder or give rise to any claim for damage if and to the extent such delay or failure is caused by any event beyond the control of the party affected which the party had no reasonable way of preventing or grounds to anticipate, including but not limited to an act of war (whether declared or not), terrorism, natural disaster, fire, explosion, severe weather or labour dispute. The affected party shall immediately notify the other party in writing of the causes and expected duration of any such occurrence. The parties will amend the time for delivery of the Services through a variation if effected by a force majeure event.

13.2.EPS shall not be liable to Client for failure to perform any of its obligations under the Contract to the extent that such failure is a result of circumstances beyond its reasonable control. Should such circumstances continue for more than 21 days, EPS may terminate the Contract.

14. Assignment and Subcontracting

14.1.Client shall not assign, subcontract or otherwise transfer any right or obligation of the Contract whether in whole or in part, without the consent in writing of EPS.

15. Non-Solicitation

15.1.While this Contract is in force and for a period of 12 months after completion or termination, Client shall not, directly or indirectly, seek to employ or otherwise engage the services of any EPS Employees, who have been involved in the Contract or performance of the Services.

16. Entire Agreement

16.1.Except for any applicable valid licence agreements between the parties, the Contract contains the whole agreement between the parties and supersedes any previous agreements, communications and representations. No oral representations made by EPS or EPS Employees are binding. Neither party has relied upon any representation or collateral warranty which is not set out in the Contract. All other terms and conditions are expressly excluded except those prohibited by statute.

17. Waiver

17.1.No waiver of any breach of any provision of the

Contract shall be held to be a waiver of any other or subsequent breach and the failure of a party to enforce any provision shall not be a waiver of any right subsequently to enforce any other provision.

18. Severability

18.1.If any of the words or provisions of this Contract is deemed invalid, illegal or unenforceable for any reason, then the Contract shall be read as if the relevant words or provisions are, to the extent required, deleted and the validity of the remaining provisions shall not be affected.

19. Notices

19.1.Any notice required to be given by either party under this Contract shall be deemed to have been given if in writing and sent by post to the other party's registered address or any other formally notified address of the other party. Notices shall be deemed served 48 hours after posting.

19.2.Any other communication required in writing may be by post, email or fax.

20. Rights of Third Parties

20.1.No person who is not a party to the Contract shall have any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of the Contract.

21. Law and Jurisdiction

21.1.This Agreement shall be governed and construed in accordance with the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

21.2.All disputes, claims or matters arising out of or in connection with this Agreement shall be referred to arbitration using the LCIA rules. The English language shall be used.

22. Anti Bribery

22.1.The Customer shall not, either directly or indirectly, make any payment or give any gift (or offer, promise or authorise any such payment or gift), to any government official or officer or employee of governmental body, department or agency or company, or any political party or official or candidate thereof or any official of a public international organisation in an attempt to influence any decision or otherwise gain favour for EPS in connection with the EPS's business in violation of any applicable law.

22.2.The Customer understands that EPS does not authorise any payments which would be prohibited by (a) the United States Foreign Corrupt Practices Act (FCPA), (b) any applicable United Kingdom legislation regulating the ethical conduct of business practices, (c) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or any legislation implementing the Convention or (d) any other similar law, rule or regulation of any other government having jurisdiction over this Agreement and/or the parties hereto, and the Customer acknowledges that no employee of EPS shall have authority to give any direction relating to the making of any commitment by EPS to any third party in violation of FCPA, or any such similar law, rule or regulation.

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22.3. The Customer further agrees that, notwithstanding any other provision hereof to the contrary, if any such payments are made, such payment(s) or the value thereof shall not be reimbursable hereunder and the EPS shall have the right to terminate this Agreement forthwith, in which case no further payments shall be due hereunder except for charges accrued or due at the time of termination (less the amount of the prohibited payment).

23. Entire Agreement and Reliance Upon Information

23.1. Each party acknowledges and agrees that, save as otherwise stated in the contract, it has not relied upon any representation, statement, warranty, undertaking, promise or assurance and neither party shall be liable or have any remedy in respect of any misrepresentation or untrue statement, warranty, undertaking, promise or assurance (whether made negligently or otherwise) unless and to the extent that a liability or remedy lies under the provisions of this agreement.

23.2. This agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes, cancels and nullifies any previous agreement between the parties to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

24. Title

24.1. The legal and beneficial ownership of EPS in any goods to be supplied by EPS shall not pass until payment in full has been made in respect of those goods of the Project in respect of which the supply of those goods forms a part.

24.2. Until ownership in the goods passes to the Client, the Client will hold the goods on behalf of EPS and will keep the goods separate from its goods and those of third parties, properly stored, protected, insured and identified as EPS's property. EPS may, before ownership in the goods passes, require the Client to deliver up the goods to it and, if the Client fails to do so, may repossess the goods. The Client grants EPS an irrevocable licence to enter with or without vehicles, any of its premises for the purpose of inspecting or repossessing the goods.

24.3. If EPS have any goods or equipment on site that are provided as part of the Work, then the Client agrees to indemnify EPS on an ongoing basis for any damage, loss or destruction of the equipment/goods (including reasonable legal fees) caused by the Client or a third party. This will exclude any normal wear and tear associated with the type of equipment/goods being used: such wear and tear to be judged by EPS on a reasonable basis.

25. Earthing Clauses

In the event Services include electrical earthing solutions, the following supplementary clauses apply:

25.1. The general design practices, procedures and calculations that are not specific to Client's site and the raw soil resistivity data obtained from any site measurements shall become the property of EPS.

25.2. In giving advice and/or making recommendations to

Client in connection with business strategy, purchasing, tender preparation, tender evaluation and/or engineering methods, EPS does no more than suggest steps Client might sensibly take and shall not be liable for any damage or loss suffered by Client in reliance upon any such advice.

25.3. Client accepts full responsibility for the consequences of pre-arranged and agreed disconnection of electricity supply for the purposes of carrying out the Services in respect of the Contract and shall indemnify EPS against all claims and losses in relation to injury or damage (whether to person or property) or death occasioned by any such disconnection.

25.4. Unless otherwise agreed in writing, Client shall obtain any required consents for EPS to access third party land. EPS shall not be liable for any failure to obtain such consents. Client shall indemnify EPS from all claims and losses in relation to EPS's access to and presence on third party land. In addition, Client shall indemnify EPS from all claims and losses in relation to any outbreak or spread of disease, including but not limited to Foot and Mouth disease.