

STANDARD CONTRACT –PROVISION OF EQUIPMENT AND PRODUCT SALES

Terms and Conditions – Packaged Substations

Definitions and interpretation

In these Conditions:

- 1.1. "Consents" means any and all permissions, consents, conditions, restrictions, approvals, notices, and licences of the local authority or any third party necessary for and relevant to the performance and completion of the Services;
- 1.2. "Contract" means the contract for the purchase and sale of the Goods and Services, subject to these Conditions;
- 1.3. "Contract Price" means the price the Customer shall pay EPS for the Goods and Services (which is exclusive of VAT) and as set out in the Specification (and as supplemented and/or varied in accordance with these Conditions);
- 1.4. "Customer" means the person entering into the Contract with EPS;
- 1.5. "Goods" means the Goods (including but not limited to any instalments or parts) which EPS is to supply in accordance with these Conditions;
- 1.6. "Services" means the Services (including but not limited to any repair work or instalments) which EPS is to perform;
- 1.7. "EPS" means Engineering Power Solutions Limited (CRN: 7981001) whose registered office is at 18 Binchester Court, Ingleby Barwick, Stockton-on-Tees, TS17 5LY;
- 1.8. "Site" means the location where the Services are to be performed as set out in the Specification;
- 1.9. "Site Standards" means the [required standards, access requirements and facilities to be made available at the Site for use by EPS and which are set out in the Specification];
- 1.10. "Specification" means a document or documents identifying the price, invoicing arrangements, quantity, quality and description of and any specification for the Goods (and the Services, if any) to be supplied by EPS to the Customer; and
- 1.11. "Working Hours" means 8.00am to 4.30pm, excluding Saturdays, Sundays, and Bank Holidays.

2. General

- 2.1. A quotation by EPS is not an offer. Quotations are valid for 30 days only and subject to withdrawal or revision at any time before acceptance of the Customer's order by EPS. Each order for Goods and/or Services by the Customer is an offer by the Customer to purchase the Goods and/or Services subject to these Conditions. The Contract shall be made on acceptance by EPS (on EPS's acknowledgement of order form) of a written order placed by the Customer (or when EPS supplies the Goods and/or Services to the Customer, if earlier) and shall be subject to these Conditions.
- 2.2. The Customer must ensure that the terms of any order (including any specification prepared by the

Customer) are complete and accurate and that the Customer gives to EPS any necessary information relating to the Goods and Services within a sufficient time to enable EPS duly to perform its obligations in connection with the Contract.

- 2.3. These Conditions may only be varied in writing, signed by an authorised person of EPS. No other conditions or terms whatever whether oral or written regardless of the date or dates upon which they were sent or exhibited by the Customer shall affect or vary these Conditions and/or the terms upon which the Contract is made.
- 2.4. Any advice or recommendation given by EPS or its employees or agents to the Customer as to the storage, application or use of the Goods which is not confirmed in writing by EPS is followed or acted upon entirely at the Customer's own risk and the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such unconfirmed representation (unless such representation is made fraudulently).
- 2.5. In the event of any conflict or discrepancy between the Specification and these Conditions, then the terms in the Specification will prevail.

3. Limits of the Specification

- 3.1. 3.1 The Contract shall include only such Goods and Services as described in the Specification or the Customer's order (if subsequently accepted in writing by EPS). Unless specifically agreed in writing, all drawings dimensions and weights submitted by EPS shall be taken to be approximate and shall not form part of the Specification.
- 3.2. All drawings, plans, specifications, method statements and related documents submitted by EPS in connection with the Contract remain the property of EPS with all rights reserved. In the event the Contract is not concluded or alternatively, following completion of the Services, all drawings, plans, specifications and method statements and related documents are to be returned to EPS without delay. The Customer is not permitted to make copies of such documents without having first obtained the consent of EPS in writing.
- 3.3. EPS reserves the right to make any changes in the Specification which are required for the Goods or Services to conform with any applicable statutory or regulatory or safety requirements or any other changes which EPS may reasonably require, provided such changes do not substantially affect the quality or performance of the Goods.
- 3.4. If the Goods are to be supplied and/or the Services to be performed by EPS in accordance with any documents or information provided by the Customer, the Customer shall indemnify EPS against all loss, damages, costs and expenses awarded against or incurred by EPS in connection with or paid or agreed to be paid by EPS in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights

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of any other person which results from EPS's use of the Customer's specification.

- 3.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by EPS shall be subject to correction without any liability on the part of EPS.

4. Limits of Contract Price

- 4.1. Unless otherwise expressly agreed in writing, the Contract Price has been calculated on condition that the Services are capable of being performed to an agreed programme with uninterrupted access to the Site during the Working Hours and that the Site conforms to the required Site Standards. In the event the Customer requires performance of the Services outside Working Hours or the Site does not conform to the Site Standards, any additional costs or expenses incurred by EPS (including but not restricted to the supply of any necessary services, waiting and travelling time) shall be paid by the Customer to EPS within 28 days of the date of EPS's invoice or demand for payment.

- 4.2. All items ordered in addition to those identified in the Specification will be charged for in addition to the Contract Price as will the costs of all tests, alterations, additions and all other work undertaken at the request of the Customer but not identified in the Specification. Those additional costs will be calculated by EPS having regard to the rates and prices set out in its quotation or in the Specification or as otherwise agreed with the Customer and will be paid for by the Customer within 28 days from the date of EPS's invoice or demand for payment.

5. Customer's obligations

- 5.1. The Customer shall provide all sufficient and accurate information requested by EPS in a timely fashion to enable the proper performance of the Services by EPS so as not to delay or disrupt EPS in performing its obligations under the Contract.
- 5.2. EPS shall be entitled to rely on the accuracy and sufficiency of all information provided to it by the Customer, and to make assumptions on the basis of such information, when supplying the Goods and supply of Services.
- 5.3. The Customer is responsible for ensuring that the Site complies with the Site Standards at the time of delivery of the Goods and performance of the supply of Services.
- 5.4. Except where otherwise stated in the Specification, the Customer must obtain at its own cost all Consents required to enable EPS to carry out and complete the Services and the Customer must comply with any conditions contained in the Consents relating to the Goods and the supply of Services or the Site.
- 5.5. The Customer agrees to have due regard to all information supplied by EPS relating to the use of the Goods necessary to ensure the Goods will be safe and do not pose a risk to the health and/or safety of any person at all times when the Goods are being set, used, cleaned or maintained by any person.
- 5.6. Except where otherwise stated in the Specification or

agreed in writing, the Customer shall provide EPS at the Customer's own cost and expense with a suitable water and power supply, toilet and washing facilities and storage space on Site at such times and in such a manner as EPS will from time to time require in order that EPS may perform its obligations and duties under the Contract.

- 5.7. The Customer agrees to indemnify EPS in respect of any and all claims, losses, costs, and expenses suffered or incurred by EPS:

arising from the Goods being unsafe caused by any act, omission or default of the Customer; and

arising from a breach by the Customer of any of its obligations under this condition 5.

6. Delivery

- 6.1. Except where otherwise stated in the Specification or agreed in writing, the Goods shall be deemed delivered on issue of a notice in writing to the Customer indicating that the Goods are ready for collection from the location specified in the notice.

- 6.2. Where the Goods are to be delivered or Services are to be performed in instalments, each delivery or performance shall be a separate contract and failure by EPS to deliver or perform any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalment shall not entitle the Customer to treat the Contract as a whole as repudiated.

- 6.3. If the Customer fails to take delivery of the Goods or EPS is unable to deliver the Goods on time because the Customer has not provided adequate instructions, documents, licences or authorisations, then the Goods are deemed delivered and EPS may:-

store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

- 6.4. In the event that we are frustrated from despatching the goods through no fault of our own, then the invoice would be issued not later than 7 days following the acknowledged readiness for despatch date. The invoice would be deemed payable in line with the agreed payment conditions for the target despatch date.

7. Transport and packing

- 7.1. Goods sold "ex works" shall be despatched according to the Customer's instructions.

- 7.2. Goods sold "delivered" shall be despatched by any means of transport at EPS's option unless otherwise agreed in writing. All unloading and demurrage charges which may be incurred will be charged to the Customer. It is a condition that where EPS sells Goods "delivered" that adequate facilities exist for so doing by road and for unloading.

- 7.3. Any packing or protection shall be at the discretion of

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EPS.

7.4. All packing or protection shall be charged to the Customer in addition to the Contract Price unless it is specifically included in the Contract Price.

8. Time for Delivery and Installation

8.1. Delivery times of the Goods and performance of the Services where given will date from the confirmation by EPS of the Customer's order.

8.2. Time for delivery of the Goods and/or performance of the Services are approximate only and shall not be of the essence of the Contract.

8.3. If the Customer extends or delays the performance of the Services or fails to take delivery of any Goods at the agreed time or (if no time is agreed) within a reasonable time then the Customer shall indemnify EPS against all loss (including loss of profit), costs (including the cost of storage and all labour and materials used), damages, charges or expense suffered or incurred by EPS as a result of such extension, delay or failure.

8.4. EPS reserves the right to defer the date of delivery of the Goods or performance of the Services, to cancel or terminate the Contract or reduce the volume of Goods ordered without liability to the Customer if EPS is prevented from or delayed in carrying on its business by any cause beyond EPS's reasonable control (which includes difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery) or caused by any act, omission or default of the Customer.

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION 9

9. Exclusions and Limitation of Liability

9.1. Nothing in these Conditions excludes or limits EPS's liability for death or personal injury caused by EPS's negligence or for fraudulent misrepresentation and all provisions in the Contract shall be construed subject to this condition.

9.2. EPS shall not be liable to the Customer by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect special or consequential loss or damage (whether for loss of profit, loss of production, loss of use, loss or revenue, loss of contract, goodwill or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of EPS, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services or the use of the Goods or resale by the Customer or the contemplated performance or lack of performance of EPS's obligations under this Contract.

9.3. EPS's entire aggregate maximum liability in contact, tort, negligence, breach of statutory duty, misrepresentation or otherwise arising in connection with the performance or contemplated performance or lack of performance of its obligation in connection with the Contract shall be limited to:

the amount recoverable from EPS's insurers in

respect of claims the subject matter of which are both insurable and insured by EPS; or

the Contract Price in respect of claims the subject matter of which are not insured by EPS.

9.4. EPS shall have no liability for defects due to a design or specification made, finished or specified by the Customer.

9.5. EPS will not be liable to the Customer or be in breach of Contract by reason of delay or failure to perform any of EPS's obligations if the delay or failure was due to any cause beyond EPS's reasonable control or caused by any act, omission or default of the Customer or any of its servants, agents or employees.

9.6. EPS will take all reasonable steps to avoid damage to the Site but no responsibility will be accepted by EPS in respect of damage to any property, fixtures or fittings in, on, under or around the Site caused by the employees or agents of EPS when delivering the Goods and/or performing the Services.

10. Warranty

10.1. EPS warrants to the Customer that the Goods correspond with the Specification at the time of delivery and will be free from defects in material and workmanship for a period ("the Guarantee Period") of 12 months from date of delivery to the Customer (save that the Guarantee Period shall be 24 months in the case of Transformers reconditioned or rebuilt by EPS or its service supplier, 18 months in the case of switchgear reconditioned or rebuilt by EPS and 3 months in the case of Rectifiers and Capacitors reconditioned or rebuilt by EPS or its service supplier).

10.2. EPS warrants that it will exercise reasonable skill and care to the normal standards to be expected from members of EPS's industry when performing the Services.

10.3. In the event of any defect in the Goods appearing within the Guarantee Period the Customer shall:

notify EPS in writing of any such defects within 7 days of their discovery; and

upon EPS's written request return the Goods or part of them to EPS's works carriage paid by the Customer.

10.4. In no event shall the Customer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Customer to reject them.

10.5. If the Customer does not notify claims in accordance with condition 10.3, then:-

the Customer shall not be entitled to reject the Goods and/or Services; and

EPS shall have no liability for such defect or failure; and

the Customer shall be bound to pay the full price for the Goods and/or Services.

If any Goods are found not to correspond with the Specification, EPS may at its sole option, either:

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at its own expense repair or replace the Goods found not to conform with the Specification or carry out the Services again; or

reduce the Contract Price by an amount equivalent to that proportion of the Contract Price payable in respect of the Goods found not to correspond with the Specification.

Except as expressly set out in these Conditions, all other warranties, stipulations and undertakings as to the quality and fitness for purpose of the Goods and/or the Services whether express or implied by statute or common law are excluded to the fullest extent permitted by law.

The warranty given in this condition 10 shall not apply if:

the Customer makes, causes or allows to be made any alterations or repair to the Goods without the written consent of EPS, which shall not be unreasonably withheld; or

any defect arises in the Goods from any information, drawing or specification prepared or supplied by the Customer; or

any defect arises in the Goods from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow EPS's instructions or maintenance requirements, misuse or alteration or repair of the Goods without EPS's prior approval; or

the Goods have been improperly installed or connected (unless EPS carried out the installation and connection).

11. Cancellation and Variation by the Customer

11.1. Save as provided by condition 8.4, orders accepted by EPS cannot be varied or cancelled by the Customer without EPS's written consent. EPS reserves (as a condition of granting such consent) the right to make charges to cover the costs incurred by EPS at the date of cancellation or of variation requested by the Customer.

12. Payment

12.1. EPS shall be entitled to submit an invoice or invoices to the Customer for payment of the Contract Price as set out in the Specification (or as supplemented and/or varied in accordance with these Conditions) or within 14 days after the date of delivery, whichever is the earlier.

12.2. The Customer shall pay EPS's invoices in full and without any deduction, contra-charge, withholding or set-off within 28 days of the date of each invoice. EPS shall be entitled to recover the full amount of each invoice, notwithstanding that the Goods or any part of them have not been collected or delivered to or from the Site or that the Services have not been completed.

12.3. The time for each payment of the Contract Price is of the essence of the Contract. Receipts for payment will only be issued on written request.

12.4. Unless otherwise stated in the Specification, any price quoted by EPS for the Goods is exclusive of the cost of delivery to the Customer (and exclusive of all transport, packaging, insurance costs and any taxes,

duties or surcharges)

12.5. All prices (including but not limited to the Contract Price) are exclusive of VAT. The Customer shall pay to EPS all VAT due and properly chargeable in respect of the Goods and the Services.

12.6. In the event the Customer fails to comply with EPS's terms of payment, EPS may (without prejudice to any legal rights of action EPS has or may have) without notice, suspend or discontinue at any time the provision to the Customer of any further Goods and/or Services. In any event, the Customer shall remain liable to pay for Goods or Services delivered or supplied prior to such cancellation by EPS or the Customer. The Customer shall indemnify EPS against any and all costs and expenses incurred by EPS arising out of or in connection with EPS taking action to recover any overdue payment.

13. Ownership and Risk

13.1. The ownership of the Goods shall not pass to the Customer until EPS has been paid all that is due to it under the Contract.

13.2. Until ownership in the Goods passes to the Customer, the Customer shall keep the Goods as bailee and trustee for EPS and EPS may recover or resell the Goods and enter the Site or any other premises where the Goods are located for this purpose so as to discharge any overdue payment. The Customer shall be entitled to sell the Goods to third parties in the normal course of its business on condition that the proceeds of such resale shall be held by the Customer as trustee for EPS and kept in a separate identifiable bank account and the Customer authorises EPS to make enquiries of its bankers (or otherwise as appropriate) relating to such proceeds.

13.3. Risk in the Goods shall pass to the Customer upon delivery to the premises of the Customer as described in the Specification.

14. Lien

14.1. EPS shall have a general lien (together with a power of sale) on all Goods and property owned by EPS in the Customer's possession until payment is made in full and in cleared funds of all amounts due to EPS under the Contract or any other contact between EPS and the Customer and shall be entitled on the expiration of 14 days' notice to dispose of such Goods as it thinks fit and apply any proceeds towards such debt.

14.2. No disputes as to quality or performances of the Goods or Services shall entitle the Customer to delay payment unless EPS shall agree liability thereon in an agreed sum or shall have been found liable in the English courts.

15. Equipment offered which is not EPS's Own Property

15.1. Any information supplied by EPS concerning the location and other matter in respect of equipment which is not EPS's own property is given on the understanding that the Customer will not make a direct approach to purchase the equipment through the owners but will purchase them through EPS.



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15.2.The Customer agrees not to make any direct approach to the owner of such equipment and undertakes to reimburse EPS in respect of any loss of commission or other loss which EPS may suffer as a result.

16. Severance

16.1.If any term or condition of the Contract is for any reason held to be illegal invalid ineffective inoperable or otherwise enforceable by law it shall be severed and deemed to be deleted from the Contract and the validity and enforceability of the remainder of the Contract shall not be affected or impaired in any way. If any provision of the Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification as may be necessary to make it valid.

17. Assignment

17.1.The Customer shall not assign or transfer its rights under the Contract to any third party without the prior consent in writing of EPS. Nothing in the Contract shall confer any right pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not a party to it.

18. English Law

18.1.The Contract shall be governed and construed in accordance with English law and the parties submit to non-exclusive jurisdiction of the English courts.