

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these terms and conditions (**Conditions**), the following terms shall have the following meanings:
- Charges** means the price of the Works and/or Design Services calculated in accordance with clause 5 or as otherwise agreed in writing;
- Contract** means the contract agreed between PCS and the Customer for the supply of Works and/or Design Services comprising of the Order and these Conditions;
- Confidential Information** means any information that is directly or indirectly disclosed (however conveyed) by one Party to the other Party which would appear to a reasonable person to be confidential and which relates to the business and affairs of that Party including any charges, rates, operations, processes, plans or intentions, developments, trade secrets, know how, design rights, market opportunities, personnel, customers and suppliers and all information derived from the above other than information:
- that was in the public domain at the time it was disclosed or becomes available in the public domain without breach of any obligation of confidentiality;
 - that is given to the recipient by a third party who is lawfully entitled to disclose it; or
 - that was already known or independently generated by the recipient;
- Customer** means the Customer specified in the Order;
- Customer Materials** means any specifications, reports, documents, papers, drawings, technical designs, lay-outs, or other documents (in whatever form) provided by the Customer to PCS for the purposes of the Works and/or the Design Services;
- Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK relating to the use of personal data including the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679), the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications Regulations 2003 as amended;
- Design Services** means the electrical design services as specified in the Order to be provided by PCS to the Customer;
- Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, computer software, database rights, rights to use and protect the confidentiality of Confidential Information including know how and trade secrets, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extension of, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- Materials** means any reports, documents, papers, drawings, technical designs, lay-outs, and any other deliverables (whether in documentary, electronic or other form) developed, used or produced by PCS or its agents, contractors and employees in connection with the Works and/or the Design Services but not including the Customer Materials;
- Order** means an order provided by the Customer either verbally or in writing to PCS detailing the Works and/or Design Services to be provided by PCS and if any Works and/or Design Services are provided by PCS without receipt of a written Order, the Customer shall provide a purchase order or other written

confirmation confirming the nature of the Works and/or Design Services within 3 Working Days;

Parties means PCS and the Customer (and **Party** shall mean either of them as applicable);

PCS means Process Control Services UK Ltd, company number 03408352 whose registered office is at Unit 9 Staden Business Park, Staden Lane, Buxton, SK17 9RZ;

Representatives means a Party's employees, officers, sub-contractors and representatives;

Site means the location at which the Works will be performed as specified by the Customer in the Order;

Specification means the specification for the Design Services as agreed in writing between the Parties;

Working Day means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the City of London;

Works means the works and services agreed to be supplied to the Customer in the Order by PCS pursuant to the Contract (but for the avoidance of doubt excluding Design Services);

1.2 In these Conditions:

- 1.2.1 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.2 the headings are for ease of reference only and shall not affect construction or interpretation;
- 1.2.3 any phrase introduced by the terms **including**, **include** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.4 reference to **in writing** and **written** shall include by email.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the performance of Works and/or Design Services by PCS for the Customer.
- 2.2 Any quotation or proposal document provided by PCS shall not constitute an offer, and is only valid for a period of 60 days, or such other period as may be specified therein.
- 2.3 The Contract will be formed once PCS has confirmed acceptance of an Order whether verbally or in writing or if earlier, when PCS begins performing the Works or Design Services. Once formed, the Contract will be binding on the Customer and shall continue until the Works and/or Design Services have been performed in full or if earlier, until the Contract is terminated in accordance with clause 11.
- 2.4 No Purchase Order shall be deemed to be accepted by PCS until it has been accepted and acknowledged by PCS whether verbally or in writing.
- 2.5 These Conditions apply to and form part of the Contract to the exclusion of all other terms and conditions including any terms and conditions which the Customer seeks to impose or incorporate, or which are howsoever implied including by trade, customer practice or course of dealing.
- 2.6 All descriptions or illustrations contained in or on PCS's website, company materials or other documents are issued or published for the sole purpose of giving an approximate idea of the works and services provided by PCS described in them. They shall not form part of the Contract and PCS shall not be held liable for any inaccuracy in any such information.

3. PROVISION OF WORKS

- 3.1 PCS shall perform the Works at the Site and shall use reasonable endeavours to meet any performance dates specified in an Order but any such dates shall be estimates only and time for performance by PCS shall not be of the essence.
- 3.2 If the Customer wishes to delay or rearrange the date for commencement of the Works, it must make such request in

writing and all such requests shall be subject to agreement by PCS.

- 3.3 If commencement of the Works is delayed, rearranged or cancelled by the Customer with less than 48 hours' notice prior to the due commencement date or otherwise prevented or delayed by any act or omission of the Customer or its Representatives then, without prejudice to any other right or remedy it may have, the Customer shall be liable for an administration charge as determined by PCS taking reasonable account of additional and/or wasted time and effort incurred by PCS in accommodating the request and any additional costs reasonably incurred by PCS including any aborted journey costs and costs of materials or equipment purchased or ordered in advance relating to the Works which cannot be reimbursed.

4. DESIGN SERVICES

- 4.1 PCS shall perform the Design Services:
- 4.1.1 in accordance with all applicable laws;
- 4.1.2 with reasonable skill, care and diligence and to the standard to be expected of a qualified professional undertaking services similar in scope and character to the Design Services;
- 4.1.3 in accordance with the Specification in all material respects;
- 4.2 PCS reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Design Services, and PCS shall notify the Customer in any such event.

5. CHARGES AND PAYMENT TERMS

- 5.1 The Charges for the Works and/or Design Services shall comprise of:
- 5.1.1 a fixed price which shall be notified to the Customer either verbally or in writing; or
- 5.1.2 calculated on a time and materials basis in accordance with PCS' agreed day work rates as set out in PCS' rate card; and
- 5.1.3 PCS shall charge the Customer for any expenses reasonably incurred in connection with the Works and/or Design Services including the costs of materials and equipment.
- 5.2 The Charges shall be exclusive of value added tax (VAT) which shall be chargeable from time to time and shall be paid by the Customer subject to receipt of a valid VAT invoice.
- 5.3 PCS reserves the right to increase the Charges from time to time and shall, where possible, notify the Customer of any such increase prior to carrying out the Works and/or Design Services. Where a price increase is due to a change in the price of copper and steel or other materials, such additional costs shall be charged in addition to the agreed price.
- 5.4 PCS shall invoice the Customer for the Charges (in its discretion):
- 5.4.1 following completion of the Works and/or Design Services; or
- 5.4.2 at the end of each month for Works and/or Design Services completed in that month and in the case of any costs referred to herein for which the Customer is responsible, at the end of the month in which such costs have been incurred; or
- 5.4.3 in instalments (for example, in stage payments or upon completion of milestones) as specified in the Order or otherwise agreed in writing.
- 5.5 The Customer shall pay each invoice submitted by PCS to PCS' nominated bank account within 30 days of the date of the invoice.
- 5.6 If the Customer is required to pay any instalments to PCS during any specified period, the Customer shall comply with such commitments and PCS may invoice the Customer accordingly.

- 5.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

- 5.8 If the Customer fails to make any payment due to PCS under the Contract by the due date for payment, then, without limiting PCS' other rights and remedies:

- 5.8.1 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate from time to time which shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement; and/or

- 5.8.2 PCS may suspend supply of the Works and/or Design Services under the Contract or any works or design services under any other contract between the Parties until such time as payment of the overdue amount together with any interest payable in accordance with clause 5.8.1 is received in full.

- 5.9 In the event of dispute with regard to an invoice, the undisputed portion shall be paid by the Customer in accordance with clause 5.5. Upon resolution of the disputed portion, any amounts owed to PCS shall be paid with interest at the rate set out in clause 5.8.1 above accruing from the date such amounts were originally due.

6. CUSTOMER RESPONSIBILITIES

- 6.1 The Customer shall:
- 6.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- 6.1.2 co-operate with PCS in all matters relating to the Design Services;
- 6.1.3 provide PCS, its employees, agents, consultants and subcontractors with adequate and unrestricted access to the Site as is required for the ongoing performance of the Works and/or such access to the Customer's premises, office accommodation and other facilities as reasonably required by PCS for the purposes of the Design Services;
- 6.1.4 provide power and other facilities and utilities as PCS may require for the proper performance of the Works;
- 6.1.5 be responsible for compliance with all applicable health and safety laws at the Site; and
- 6.1.6 provide PCS with such information and materials as PCS may reasonably require in order to perform the Works and/or supply the Design Services, and ensure that such information and materials are complete and accurate in all material respects.
- 6.2 If PCS' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 6.2.1 without limiting or affecting any other right or remedy available to it, PCS shall have the right to suspend performance of the Works and/or Design Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays PCS' performance of any of its obligations;
- 6.2.2 PCS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from PCS' failure or delay to perform any of its obligations as set out in this clause 6.2; and
- 6.2.3 the Customer shall reimburse PCS on written demand for any costs or losses sustained or incurred by PCS arising directly or indirectly from the Customer Default.

7. RISK AND TITLE

- 7.1 As between PCS and the Customer, title to any goods, materials or equipment used in relation to the Works (excluding any materials or equipment belonging to PCS prior to the commencement of the Works which shall remain with PCS at all times) (the **Products**) shall remain with PCS until payment is received in full for the Works in accordance with clause 5, upon receipt of which title in any such Products shall transfer to the Customer.
- 7.2 The risk of loss of or damage to the Products shall pass to the Customer on delivery of the Products to the Site and from that date, the Customer shall, and shall ensure that its Representatives shall:
- 7.2.1 not remove, deface, or obscure any identifying mark on the Products;
- 7.2.2 not cause or permit the Products to be removed from the Site without PCS's prior written consent;
- 7.2.3 not remove anything from or modify or attempt to modify the Products, without PCS's prior written agreement;
- 7.2.4 take reasonable measures to take care of the Products and protect and insure them against theft and/or damage and only use them for their proper purpose in a safe and correct manner;
- 7.2.5 not do or permit to be done anything which may prejudice or jeopardise the title, rights and/or interest of PCS in the Products;
- 7.2.6 not at any time, sub-let, part with possession of, re-hire, sell, assign, or otherwise transfer the Products nor create any mortgage, charge, lien or other security over the Products.
- 7.3 The Customer shall on demand indemnify PCS against all and any loss of and/or damage to the Products (fair wear and tear excepted), claims, liabilities, costs, charges and/or expenses that may be caused by the Customer's failure to observe and perform its obligations under these Conditions.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 All Intellectual Property Rights in the Materials (other than Intellectual Property Rights in any Customer Materials) shall be owned at all times by PCS.
- 8.2 Subject to payment by the Customer of all outstanding invoices relating to the Works and/or Design Services, PCS hereby grants to the Customer a non-exclusive, revocable, perpetual licence to use, copy and reproduce such Materials for the purposes of receiving and using the Works and/or Design Services and in its usual course of business.
- 8.3 PCS shall not be liable for use of the Materials for any purpose other than that for which they were prepared and/or provided.
- 8.4 The Customer grants to PCS a fully paid up, non-exclusive, non-transferable licence to copy and modify any Customer Materials for the purpose of PCS providing the Works and/or Design Services to the Customer.

9. DATA PROTECTION

- 9.1 Each Party acknowledges that they as the 'Data Discloser' may disclose Shared Personal Data to the other Party as the 'Data Recipient' for the purposes of verifying the identity and qualifications of persons undertaking the Works at the Site and to communicate any concerns regarding the Work performed by such persons (the 'Agreed Purposes').
- 9.2 The following terms shall have the meaning as set out in the Data Protection Legislation in force at the time: Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures.

- 9.3 'Shared Personal Data' means the personal data to be shared between the Parties under this Agreement. Shared Personal Data shall be confined to an individual's name, gender, date of birth, relevant qualifications and such other details as required for the purpose of the Parties fulfilling their obligations under the Contract.
- 9.4 Each Party shall comply with all the obligations imposed on them as a controller under the Data Protection Legislation.
- 9.5 Each Party shall:
- 9.5.1 ensure that it has all necessary consents and notices in place to enable the lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
- 9.5.2 give full information to any data subject whose personal data may be processed under this Agreement of the nature of such processing. This includes giving notice that, personal data relating to them may be retained by the Data Recipient, their Representatives, successors and assignees after the Contract has been performed;
- 9.5.3 process the Shared Personal Data only for the Agreed Purposes;
- 9.5.4 not disclose or allow access to the Shared Personal Data to anyone other than its Representatives, successors and assignees ('Permitted Recipients');
- 9.5.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by these Conditions;
- 9.5.6 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
- 9.5.7 not transfer any personal data outside of the European Economic Area unless the transferor complies with the provisions of Article 26 of the General Data Protection Regulation (in the event the third party is a joint controller); and ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the General Data Protection Regulation; (ii) there are appropriate safeguards in place pursuant to Article 46 of the General Data Protection Regulation; or (iii) one of the derogations for specific situations in Article 49 of the General Data Protection Regulation applies to the transfer.
- 9.6 The Parties may agree to update these clauses to reflect changes in the Data Protection Legislation either during or following expiry of the transition period being the period following the UK's withdrawal from the European Union on 31 January 2020. Any such changes shall be agreed and recorded in writing.

10. LIMITATION OF LIABILITY

- 10.1 Nothing in the Contract shall limit or exclude PCS's liability for death or personal injury caused by its negligence or the negligence of its Representatives, or for fraud or fraudulent misrepresentation or any other liability which cannot be limited or excluded by applicable law.
- 10.2 Subject to clause 10.1:
- 10.2.1 PCS shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for: loss of profit, loss of contracts or business, loss of anticipated savings, loss of or damage to goodwill, loss of or interrupted use or corruption of software, data or information, or any indirect or consequential loss or damages; and

10.2.2 PCS's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, shall be limited to the total Charges payable by the Customer to PCS in relation to the Works and/or Design Services to which the loss relates.

10.3 Each Party acknowledges that it has not relied on, and subject to clause 10.1, will have no remedies (whether in equity, contract, tort (including negligence), for breach of statutory duty, for misrepresentation (including negligent misstatement), or in any other way) for any warranty, assurance, guarantee or representation which is not expressly set out in the Contract.

11. TERMINATION

11.1 Without affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect (and in the case of termination by PCS, PCS may also cease performance of the Works and/or Design Services with immediate effect) by giving written notice to the other Party if:

11.1.1 the other Party commits a material breach of any term of the Contract and such breach is irremediable or if such breach is remediable, fails to remedy that breach within a period of 30 days after being notified in writing to do so; or

11.1.2 the other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation or has a receiver, administrative receiver or administrator appointed or otherwise suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

11.2 Without affecting any other right or remedy available to it, PCS may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract within 30 days of the due date for payment.

11.3 The Customer may terminate the Work and/or Design Services which are provided and charged on a day rate basis in accordance with clause 5.1.2 (or part thereof) by giving to PCS two weeks' notice in writing.

11.4 On termination or expiry of the Contract:

11.4.1 the Customer shall immediately pay to PCS all of PCS's outstanding unpaid invoices and, in respect of Works and/or Design Services performed but for which no invoice has yet been submitted, PCS shall submit an invoice, which shall be payable by the Customer immediately on receipt; and

11.4.2 if title to any Products has not passed to the Customer in accordance with clause 7.1, the Customer shall, on demand, make available for collection by PCS the Products and PCS may, without prejudice to its other rights or remedies and without any further notice or other act on the part of PCS, enter the Site and take possession of the Products. PCS shall not be liable for any damage caused by the removal of the Products other than as a result of PCS's negligence. The Customer shall be solely responsible for the safe keeping of the Products until such time as they are collected by PCS.

11.5 Termination of the Contract shall not prejudice or affect any rights, remedies or liabilities of the Parties that have accrued up to the date of termination including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination and such termination shall not affect the coming into or continuance in force of any provisions of the Contract which are expressly or by reasonable interpretation intended to come into or continue in force on or after termination.

12. FORCE MAJEURE

12.1 PCS shall not be in breach of the Contract, nor liable for any failure to perform or any delay in the performance of any of its obligations under the Contract if and to the extent that such failure or delay arises from or is attributable to acts, events, omissions or accidents beyond its reasonable control (including acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, pandemic, lock-outs, strikes or other labour disputes, restraints or delays affecting suppliers) (each a **Force Majeure Event**).

12.2 If a Force Majeure Event prevents PCS from providing the Works for more than 60 days in aggregate, either Party shall have the right to terminate the Contract immediately by giving notice to PCS.

13. CONFIDENTIAL INFORMATION

13.1 Each Party undertakes that it shall not at any time during the term of the Contract, and for a period of 3 years thereafter, disclose to any person any Confidential Information of the other Party, except as permitted by clause 13.2.

13.2 Each Party may disclose the other Party's Confidential Information:

13.2.1 to its Representatives or advisers who need to know such Confidential Information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Contract. Each Party shall ensure that its Representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 13; and

13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 No Party shall use the other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

14. INSURANCE

14.1 PCS has in place and will at all times maintain relevant commercial insurance policies.

14.2 The Customer shall be responsible for satisfying itself that the level and types of insurance cover effected by PCS are sufficient for the Works and/or the Design and Services and the Contract.

15. NON-SOLICITATION

15.1 The Customer agrees that for the duration of the Contract and for a period of 6 (six) months from PCS ceasing to provide the Works and/or Design Services, it shall not directly or indirectly solicit, interfere with or endeavour to entice away from PCS or induce or cause a third party to solicit or entice away, any employee or professional contractor of PCS, to enter into a contract of employment or a contract for services with the Customer or third party.

15.2 If the Customer acts in breach of clause 15.1, it shall be liable to pay to PCS (within 30 days from the commencement of such engagement) a sum equal to 20% of the total remuneration payable to the person in the first 12 months of his/her engagement.

16. GENERAL

16.1 Each of the Parties agrees to comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption (including the Bribery Act 2010). The Customer shall not engage in any activity, practice or conduct which constitutes an offence under the Bribery Act 2010 or which would do if such activity practice or conduct had been carried out in the United Kingdom.



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- 16.2 The Customer shall not, without the prior written consent of PCS, assign or otherwise transfer all, or any of its rights, obligations or liabilities under or in connection with the Contract.
- 16.3 PCS may, at its discretion, sub-contract the whole or any part of its obligations under the Contract.
- 16.4 Any notice given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office or its principal place of business or such other address as that Party may have specified to the other Party in writing in accordance with this clause. For the purposes of this clause, 'in writing' shall not include email.
- 16.5 Any variation of an Order or these Conditions shall only be valid if agreed by PCS in writing.
- 16.6 No failure or delay by either Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy shall only be effective if it is in writing and signed by the party giving the waiver.
- 16.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 16.8 The Contract constitutes the entire agreement and understanding between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.9 Nothing in the Contract shall be construed as creating a partnership, a joint venture, or the relationship of principal and agent between the Parties and neither Party shall have authority to act as agent for, or to bind the other Party in any way.
- 16.10 No person who is not a Party to the Contract shall have any rights to enforce any of its terms.
- 16.11 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.
- 16.12 Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.