

## Standard Terms and Conditions of Business

### 1. DEFINITIONS

1.1 In the PURE POWER Terms and Conditions the following terms shall have the following meanings:

1.2. "PURE POWER";, ('PURE POWER') whose registered office is 13-14 Flemming Court, Castleford WF10 5HW

1.3. "PURE POWER Terms and Conditions": the PURE POWER standard terms and conditions of business

1.4. Contract Terms "Contract Work" means the goods, material and services (the term "Services" includes but is not limited to any design function performed or undertaken by PURE POWER and the selection by PURE POWER of goods or materials) to be supplied or carried out by PURE POWER for the Customer and includes any work deemed to be additional work under the terms and conditions.

1.5. "Constructional Plant" means any equipment used or intended to be used by us in carrying out the Contract work but which will not be incorporated therein so as to become the property of the Customer in accordance with the Contract Terms.

1.6. "Customer": the person, firm or company to whom PURE POWER is to provide services in accordance with the Standard Terms and Conditions of Business.

1.7. "Engagement": the Customer's appointment of PURE POWER to provide particular goods and or services pursuant to the terms and conditions

1.8. "Engagement Letter": The PURE POWER letter for a PURE POWER business line issued to the Customer which identifies particular Services to be provided by it and that sets out other terms and conditions that shall form part of the Engagement contract between PURE POWER and the Customer together with the PURE POWER terms and conditions. Where the context admits, documents cross referenced and/or attached to the PURE POWER letter shall form part of the Engagement letter

1.9. "Force Majeure Event": an event falling within the definition set out at Clause 12.1

1.10. "Intellectual Property Rights" : all patents, copyrights and design rights (whether registered or not and all applications for any of the foregoing) and all rights of information, data, know-how, or experience whether patentable or not whensoever and howsoever arising and all renewals and extensions thereof.

1.11. "Party": PURE POWER or the Customer as the case may be

1.12. "Services": services includes but is not limited to any design function performed or undertaken by PURE POWER and the selection by PURE POWER of goods or materials to be supplied or carried out by PURE POWER for the Customer and includes any work deemed to be additional work under the Contract Terms as well as work falling within the known areas of expertise and specialization of PURE POWER as more particularly defined in an Engagement Letter or where no Engagement Letter has been issued those that are the subject of a Customer instruction to PURE POWER to proceed by way of a formal Purchase Order or where the Parties agree, by way of email confirmation

1.13. "Short Form Contract" means a contract issued by PURE POWER in relation to the provision of Contract Work/Services via a constituent PURE POWER Group Company to be read in conjunction with the PURE POWER standard terms and conditions of business.

## 2. INTERPRETATION

- 2.1. Words importing the singular also include the plural and vice versa where the context requires.
- 2.2. Words importing persons or parties shall include firms, corporations and any other organisation having legal capacity.
- 2.3. The headings in the Terms of Business are not part of the Terms of Business nor shall they be taken into consideration in its interpretation or construction;
- 2.4. All references in the Terms of Business to clause numbers are references to clause numbers in the PURE POWER Terms and Conditions and not to those in any other documents forming part of the PURE POWER Terms and Conditions unless the context otherwise indicates.
- 2.5. Reference to a statute or statutory provision includes it as from time to time amended, extended or re-enacted.
- 2.6. These PURE POWER Terms and Conditions, any Short Form Contract and any applicable Engagement Letter shall be read together as a single document.
- 2.7. If there is any conflict between the provisions of:
- 2.7.1. The PURE POWER Terms and Conditions and any Short Form Contract or applicable Engagement Letter, then the Short Form Contract or Engagement Letter shall have precedence;
- 2.7.2. A Short Form Contract or Engagement Letter and any documents cross referenced and/or attached to the Short Form Contract or Engagement Letter then the Short Form Contract or Engagement Letter shall take precedence.

## 3. SCOPE OF BUSINESS

- 3.1. Where the Customer appoints PURE POWER to provide Services, the appointment shall be on the basis of the PURE POWER Terms and Conditions and any applicable short form contract/engagement letters/purchase orders/ email instructions. The purpose of an Short Form Contract/Engagement Letter shall be to address business line and project specific issues including the precise scope of Services, timescales for deliverables and charges/costs associated with the specific assignment.
- 3.2. In carrying out the Services PURE POWER shall exercise the reasonable care and skill to be expected of a competent provider of services similar in scope nature and complexity to the Services. No other warranty or representation, express or implied, shall apply under and/or in connection with this the Engagement. PURE POWER will not be liable to carry out any works other than those specified in the tender return/quotation but may at its discretion carry out additional works upon receipt of a written request by letter, fax or email, signed by the Customer electronically or otherwise setting out the additional works to be undertaken.
- 3.3. PURE POWER reserves the right to appoint a subcontractor of its choice to carry out any part of the works

## 4. CHARGES

- 4.1. PURE POWER reserves the right to require payments to be made on account before commencing or completing any Services. In such event, the amount of the on account payment shall be calculated having regard to the program for performance of the Services and the likely timing and amounts of expenses to be incurred.
- 4.2. Charges stated shall be exclusive of value added tax which, where applicable, shall be charged to the Customer at the prevailing rate.

## 5. PAYMENT TERMS

- 5.1. All invoices, interim or otherwise are strictly net and must be paid in full unless otherwise agreed within 30 days from the invoice date.
- 5.2. PURE POWER will be entitled to submit interim invoices in respect of work undertaken and goods or materials dispatched up to the date of the invoice at intervals to be specified and upon completion of the works PURE POWER will submit invoices to the Customer for the value of the completed work.
- 5.3. In cases where PURE POWER has accepted payment being made on the provision of an architect's, engineer's or surveyor's certificate, such payment must be made in full within 30 days of issue of the certificate less any agreed retention amount.
- 5.4. All payments due to be made to PURE POWER under the Terms of Business shall be made without set-off or counterclaim and free of and without deduction for any taxes, levies or duties of any description. If the Customer is required at any time by any applicable law to make any such deduction from any payment, the sum due in respect of such payment shall be increased such as shall result, notwithstanding such deduction in PURE POWER's receipt on its due date, in a net sum equal to the sum PURE POWER would have received had no such deduction been required.
- 5.5. PURE POWER may withhold deliverables or work if invoices are not paid by the Customer.
- 5.6. Interest at the rate of 4.0% above the current base rate of Barclays Bank shall be paid by our Customers on all overdue accounts. Additionally in such event, PURE POWER shall be entitled without prejudice to any right to damages or other remedy to withhold further deliveries until payment is made and/or to cancel the contract in respect of the whole or part of the goods remaining undelivered and/or by giving seven days notice in writing to the Customer to suspend work for so long as any such overdue payments remain outstanding.
- 5.7. In the case of installation works, PURE POWER will agree to a retention being made by the Customer of an amount not exceeding 2.5% of the contract value on contract values exceeding £20,000 only. Lesser contract values will not attract any retention. The retention will be repayable in full not more than twelve months after practical completion of PURE POWER's Contract Works and shall not be linked to the practical completion of any other works or any building.

## 6. CUSTOMER OBLIGATIONS

- 6.1. The Customer shall pay to PURE POWER all charges, expenses and value added tax, as required pursuant to Clauses 4 and 5. PURE POWER may suspend and/or cease further work on behalf of the Customer in the event of none, partial or late payment of any PURE POWER invoice.
- 6.2. The Customer shall provide to PURE POWER all information reasonably required and at the necessary times to enable PURE POWER to carry out the Services pursuant to the Terms and Conditions of Business
- 6.3. The Customer acknowledges that PURE POWER is entitled to rely upon the accuracy, consistency and sufficiency of any information supplied by the Customer. PURE POWER shall have no liability for any inaccuracies contained in any information provided by the Customer or any third party on behalf of the Customer.
- 6.4. The Customer authorizes PURE POWER to speak to or meet with any other person it may need to contact in order to provide the Services. PURE POWER may release to such person for the purpose of the Services any information reasonably necessary to perform the Services and which it has obtained during the Engagement. PURE POWER shall not be liable for any use subsequently made of that information.

## **7. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

7.1. PURE POWER is the beneficial owner of all Intellectual Property Rights arising out of or in connection with the provision of the Services to the Customer.

7.2. The drawings, designs, plans, specification or other documentation or materials provided by us is PURE POWER's confidential information. By receiving this, the Customer acknowledges that use or disclosure of such confidential information (whether directly or indirectly) to PURE POWER's existing or potential competitors would place PURE POWER at a competitive disadvantage and would accordingly damage PURE POWER.

7.3. The Customer shall keep confidential and not disclose to any other person (whether before or after termination or expiry of the Engagement): (a) any information received by it in respect of the methodologies and/or technologies used by PURE POWER in providing the Services; (b) the details of the commercial terms on which PURE POWER provides the Services; and (c) any other information in respect of PURE POWER's business activities which comes into its possession as a consequence of PURE POWER providing the Services and which is not publicly available.

7.4. PURE POWER shall seek the Customer's prior consent to PURE POWER announcing without limitation, through advertising and by references in proposals or submissions to prospective Customers, that they are providing or have provided the Services to the Customer. Such consent shall not be unreasonably withheld or delayed.

7.5. PURE POWER shall keep confidential and not disclose to any other person whether before or after termination or expiry of the Engagement any information in respect of the Customer's business activities which comes into its possession as a consequence of PURE POWER providing the Services and which is not publicly available.

7.6. The provisions of Clauses 7.2 and 7.3 shall not apply to either Party to the extent that disclosure is required by law or regulatory authorities or to the respective professional advisers of the Parties.

## **8. ELECTRONIC COMMUNICATIONS**

8.1. PURE POWER may communicate with the Customer by email.

8.2. PURE POWER shall not be liable for any loss arising from the Customer's receipt of any information, data or communications supplied or sent by PURE POWER electronically. The Customer shall use all reasonable procedures to seek to ensure that any materials sent by any electronic medium and/or by computer disc to PURE POWER are virus free

## **9. NON-SOLICITATION BY THE CUSTOMER**

9.1. The Customer shall not offer employment to any employee of PURE POWER working on an Engagement for the Customer or induce or solicit any such employee to take up employment with the Customer for a period of 6 months following the end of any involvement by that person with any Engagement for the Customer.

9.2. In the event that the Customer breaches Clause 9.1, PURE POWER shall be entitled to be paid compensation by the Customer equal to 6 months' salary of the employee concerned.

## **10. PROFESSIONAL INDEMNITY INSURANCE**

10.1. PURE POWER shall effect and maintain, for a period of 6 years from completion of any Engagement, except in the case of construction/installation services in respect of which the time limit will be 12 years from the date of completion, professional indemnity insurance with a limit of indemnity of no less than the limit stipulated under the limitation of liability, provided always that such insurance remains available at commercially reasonable rates.

## **11. LIMITATION OF LIABILITY**

11.1. PURE POWER shall not be liable for any special, indirect or consequential loss or damage (including, without limitation, loss of profits or business revenue) suffered by the Customer (including as a result of an action brought by a third party).

11.2. Without prejudice to the other sub-clauses of this Clause 11, where the Engagement involves PURE POWER being appointed as part of a Customer project team, liability for loss and/or damage arising under or in connection with the Engagement shall be limited to that proportion of the Customer's loss and/or damage which it would be just and equitable to require PURE POWER to pay having regard to the extent of PURE POWER's responsibility for the same and on the basis that all other Customer consultants and contractors shall be deemed to have provided contractual undertakings on terms no less onerous than this Clause 11.2 to the Customer in respect of the performance of their services in connection with the project and that there are no exclusions of or limitation of liability nor joint insurance or coinsurance provisions between the Customer and any other party referred to above and on the basis they shall be deemed to have paid to the Customer such proportion which would be just and equitable for them to pay having regard to the extent of their responsibility.

11.3. PURE POWER shall have no duty or liability in tort to the Customer save that nothing in this Clause 11, or in the Engagement, shall exclude or restrict any liability either Party may have for death or personal injury arising out of negligence.

11.4. Notwithstanding anything to the contrary contained elsewhere in the Engagement, the total liability of PURE POWER arising under or in connection with an Engagement shall not exceed the agreed fee.

11.5. The Customer will indemnify and keep indemnified, PURE POWER, PURE POWER's agents, servants and sub-contractors against PURE POWER's loss or damage of whatsoever nature including but not limited to, death of or injury to any person or persons howsoever arising, incurred or suffered by us or PURE POWER's agents, servants or sub-contractors by reason of any claim made by a third party which loss or damage would not have been incurred or suffered if the third party had been in direct contractual relationship with PURE POWER, PURE POWER's agents, servants or sub-contractors under the Contract Terms provided always that this indemnity shall not apply where such loss or damage arise from any negligence or breach of the Contract on the part of PURE POWER, PURE POWER's agents, servants or sub-contractors.

## **12. MONEY LAUNDERING AND ANTI-BRIBERY PROCEDURES**

12.1. The Customer shall provide all necessary cooperation so as to ensure that PURE POWER is able to meet its obligations under:

12.1.1. all applicable anti-money laundering legislation and regulations; and

12.1.2. all applicable anti-bribery legislation and regulations;

12.1.3. and shall itself comply with such obligations.

## **13. FORCE MAJEURE**

13.1. Neither Party shall be deemed to be in default or liable to the other Party for any matter whatsoever for any delays in performance or from failure to perform or to comply with the Terms of Business due to any cause beyond that Party's reasonable control including, without limitation, acts of God, acts of Government or other competent regulatory authority, telecommunications, network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes and other industrial disputes in each case, whether or not relating to that Party's workforce .

13.2. Each Party agrees to give notice forthwith to the other upon becoming aware of a Force Majeure Event, such notice to contain details of the circumstances giving rise to the Force Majeure Event.

## 14. TERMINATION

14.1. Without prejudice to any other rights or remedies a Party may possess:

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14.1.1. PURE POWER may terminate the Engagement by notice immediately if the Customer has failed to pay an invoice within 30 days of the final date for payment of that invoice.

14.1.2. Either Party may terminate the Engagement by notice immediately if the other Party becomes insolvent.

14.1.3. Either Party may terminate the Engagement by notice immediately if the other Party is in breach of its obligations and where such breach is capable of remedy the other Party fails to remedy such breach within 30 days of receipt of a notice specifying the breach.

14.2. For the purposes of Clause 14.1.2, a Party is insolvent if it enters into an arrangement, compromise or composition in satisfaction of its debts or goes into liquidation (in either case otherwise than for the purpose of amalgamation or reconstruction), or has a winding up or bankruptcy order made against it, or it has appointed to it an administrator or administrative receiver or any step analogous to any of the foregoing occurs.

14.3. Either Party may terminate an Engagement by giving not less than 30 days written notice to the other at any time. In such event PURE POWER shall be entitled to payment of costs for the Services it has performed and payment of the expenses it has properly incurred, up to the date of termination. Where the Engagement Letter does not identify how to calculate the costs that shall be payable where termination under this Clause 14.3 occurs, a fair and reasonable pro rata calculation shall apply having regard to the fees payable for the completion of the Engagement, the expected duration of the entire Engagement and the Services performed prior to termination.

14.4. The expiration or the termination of an Engagement, however arising, shall not operate to affect such of the provisions of the Engagement as are expressed to operate or continue in effect after then and shall be without prejudice to any rights or liabilities accrued at the date of such expiration or termination.

14.5. The contract will terminate immediately upon service or written notice of termination by PURE POWER on the Customer on any one or more of the following grounds

14.5.1. that the Customer has taken any of the steps or had any of the steps taken against him/them as set out in 28.1.5. (Ownership and Risk)

14.5.2. if the carrying out of the Contract works, or any substantial part thereof, is prevented or rendered impractical for a continuous period of ninety days by reason of accidental damage of any kind whatsoever and howsoever arising or by the act of default of any kind whatsoever and howsoever arising or by the act of default of any person other than ourselves but including the Customer

14.6. If the Customer commits an act of bankruptcy or makes an arrangement with its creditors or being a company enters into liquidation whether voluntary or otherwise in either case other than for the purpose of amalgamation or reconstruction or suffers any execution whether legal or equitable, to be levied upon his property or obtained against him, then we may without prejudice to any other rights or remedies by written notice forthwith determine this contract and we shall have the right to recover or deduct from, or set off against any such amount, the amount of damage suffered and/or loss and expense incurred by us by reason of the determination of this contract under this clause.

14.7. Termination of this Contract in any way whatsoever will be without prejudice of the rights, obligations and liabilities of either party accrued prior to termination.

14.8. Without prejudice to any of our other rights to claim damages, the Customer will, on termination of contract under Clauses 33.2.1 or 33.2.2 (Changes in Quantities) or if the Customer cancels, extends or delays or purports to cancel, extend or delay the Contract or fails to take delivery of any goods or materials, indemnify us against any loss, damage or expense incurred by us in connection with the Contract, including, but not limited to, the payment of the costs of any goods, materials, plant or tools used, or intended to be used therefore, and the cost of labour and other overheads including a percentage in respect of profit.

#### **15. NO WAIVER PARTNERSHIP OR JOINT VENTURE**

15.1. No waiver by a Party of any breach by another Party in the performance of any of its obligations under this Agreement shall operate or be construed as a waiver of any other or further breach whether of a like or different character or be effective unless in writing duly executed by an authorised representative of the affected Party.

15.2. The failure by a Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Engagement, or time or other indulgence granted by one Party to another shall not thereby act as a waiver of any breach, as acceptance of any variation, or as the relinquishment of any right under the Engagement, which shall remain in full force and effect.

15.3. An Engagement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party.

#### **16. ENTIRE AGREEMENT**

16.1. The Terms and Conditions of Business and any short form contract relating to a specific service line offered by a PURE POWER constituent company constitute the entire agreement and understanding of the Parties as to the subject matter of the Terms and Conditions of Business. They supersede any prior agreement or understandings between the Parties and no variation of the PURE POWER Terms and Conditions or any Engagement Letter shall be binding unless agreed in writing.

16.2. The Customer expressly acknowledges that they have not been induced to enter into the Terms of Business by any warranty or representation or other assurance not expressly incorporated in the Terms of Business.

#### **17. SEVERABILITY**

17.1. If any provision of the Terms of Business is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of the Terms of Business shall not be impaired.

#### **18. CONTRACTS (RIGHTS OF THIRD PARTIES)**

18.1. No term of the Engagement is intended for the benefit of a third party and the Parties do not intend that any term of the Engagement shall be enforceable by a third party in accordance with the Contracts (Rights of Third Parties) Act 1999.

#### **19. NOTICES**

19.1. Any notice or other information to be given by either Party to the other under the Engagement shall be given by:

19.1.1. Delivering the same by hand;

19.1.2. Sending the same by pre-paid registered post; or  
19.1.3. Sending the same by facsimile transmission or comparable means of communication including e-mail;  
to the other Party at the address given in Clause 19.4.

19.2. Any notice or information sent by post in the manner provided by Clause 18.1.2 which is not returned to the sender as undelivered shall be deemed to have been given on the second day after the envelope containing it was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been returned to the sender, shall be sufficient evidence that the notice or information has been duly given.

19.3. Any notice or information sent by facsimile transmission or comparable means of communication shall be deemed to have been duly given on the date of transmission, provided that a confirming copy is sent to the other Party at the address given in Clause 19.4 within 24 hours after transmission.

19.4. The address of either Party for service for the purposes of Clause 19 but excluding legal proceedings shall be that of its registered or principal office, or such other address as it may last have notified to the other Party in writing from time to time.

## **20. MISCELLANEOUS**

20.1. Each Party warrants that it has power to enter into the Terms of Business and that it has obtained all necessary consents and/or approvals to do so.

20.2. The Engagement shall inure to the benefit of and be binding upon the permitted successors and permitted assignees to the Parties.

20.3. Where the Customer comprises two or more Parties their liability under the Engagement shall be joint and several.

## **21. DISPUTE RESOLUTION AND GOVERNING LAW**

21.1. In the event that the Customer is dissatisfied with the provision of the Services by PURE POWER under the Terms of Business it must refer such complaint in the first instance to the Director in charge of the Engagement in accordance with the provisions of PURE POWER's complaints procedure current at the time of the complaint. PURE POWER shall supply to the Customer a copy of the complaints procedure upon request.

21.2. This Contract will be construed and operate in accordance with English Law provided that, under no circumstance, will the Uniform Laws on International Sales Act 1967 apply. Any disputes arising will be subject to the Technology and Construction Court in London which shall have exclusive jurisdiction.

## **22. DATA PROTECTION**

22.1. PURE POWER may use the Customer's details in providing the Services under this Engagement and for the ongoing administration of the Services to the extent that Data Protection regulations apply, PURE POWER undertakes that:

22.1.1. It shall comply with the obligations of a "Data Controller" under the provisions of the relevant Data Protection regulations;

22.1.2. PURE POWER shall not disclose or allow access to any personal data provided by the Customer or acquired by PURE POWER during the course of executing its obligations under this Engagement, other than to a person employed or engaged by PURE POWER and their legal or financial advisers;

22.1.3. Any disclosure of or access allowed to personal data shall be made in confidence and shall extend only so far as is necessary for the purposes of carrying out the Engagement and shall not be disclosed in breach of any Law.

### **23. VALIDITY**

23.1. Unless other terms and conditions are expressly accepted by PURE POWER by a written amendment referring specifically to the term to be amended and signed by a PURE POWER Director, the Contract will be on the PURE POWER Terms and Conditions as set out within this document and any PURE POWER short form agreement to the exclusion of any other terms and conditions (except any conditions implied by Statute the exclusion of which would be void) whether or not the same are endorsed upon, delivered with, or referred to in any purchase order or other document delivered by the Customer to PURE POWER. Any reference to any order specification or like document will not be deemed to imply that any terms or conditions endorsed upon, delivered with, or referred to in such document will have effect to the exclusion or amendment of the Contract Terms.

### **24. REPRESENTATIONS BEFORE CONTRACT**

24.1. If a Customer wishes to rely upon any representations made by PURE POWER or on PURE POWER'S behalf but not expressly embodied in any quotation or sub-contract to which these Terms and Conditions apply, the Customer must give PURE POWER written notice of such reliance before placing an order or signing a contract or sub-contract with PURE POWER and shall not otherwise be entitled to rely on such representations.

### **25. FORM OF CONTRACT**

25.1. The following conditions apply in all cases. Where a formal contract is required the NFBT/FASS standard form of sub-contract is normally acceptable to us but where there is any inconsistency these Terms and Conditions will prevail.

### **26. OFFER AND ACCEPTANCE**

26.1. No quotation submitted by PURE POWER will constitute a binding offer. Any order based on a quotation will be subject to acceptance in writing by us. Any stipulations or conditions in the Customer's order form which would conflict with these conditions or in any way qualify or negate the same shall be deemed to be inapplicable to the order placed with PURE POWER unless expressly agreed to by us when acknowledging the order in question.

26.2. In accordance with PURE POWER Group standard practice until a formal order is placed with PURE POWER, based upon any quotation, no liability will be accepted to the Customer or any other person, nor shall any specification, design or other technical criteria be used or relied upon by any other person.

### **27. CREDIT**

27.1. It is a condition of any Engagement, that PURE POWER may search the Customer's records at Credit Reference Agencies for the purposes of verifying their identity and to assess whether they are able to fulfill their payment obligations under the Terms of this Engagement.

27.2. Orders are accepted subject to the Customer's credit being approved by PURE POWER .

### **28. OWNERSHIP AND RISK**

28.1. The property, in goods or materials, -xed or un-xed, supplied under the Contract, ("the Goods") will not pass to the Customer until we have received in full (cash or cleared funds) all sums due to PURE POWER in respect of the Goods and all other sums which are or which become due to PURE POWER from the Customer on any account

28.2. Until ownership of the Goods has passed to the Customer, the Customer must:-

28.2.1. hold the Goods on a fiduciary basis as our bailee;

28.2.2. store the Goods separately at no cost to PURE POWER

28.2.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods

28.2.4. maintain the Goods in a satisfactory condition insured on behalf of PURE POWER to PURE POWER's reasonable satisfaction for their full replacement value against all risks including theft

from site. On request the Customer will produce the policy of insurance to PURE POWER; and

28.2.5. hold the proceeds of any insurance claim referred to in the sub clause immediately preceding this sub clause on trust for PURE POWER and not mix them with any other monies, nor pay the proceeds into any overdrawn bank account.

28.3. The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

28.3.1. any sale shall be effected in the ordinary course of the Customer's business at full market

value; and 28.3.2. any such sale shall be a sale of our property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

28.4. Without prejudice to any of PURE POWER's other rights (whether in damages or under the Contract Terms or otherwise howsoever) PURE POWER may, at any time after the price for Goods or any other sum payable by the Customer to PURE POWER under the Contract has become due and remains unpaid, rescind the Contract and recover the Goods or any of them which are still PURE POWER's property and may enter onto the Customer's premises, either by PURE POWER's agents or servants for that purpose.

28.5. The Customer's right to possession of the Goods shall terminate immediately if:

28.5.1. the Customer has a bankruptcy order made against them or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation for the purposes only of

reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

28.5.2. the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between us and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

28.5.3. the Customer encumbers or in any way charges any of the Goods.

28.6. We shall be entitled to recover payment for the goods notwithstanding that ownership of any of the Goods has not passed from us.

28.7. The Customer grants us, our agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

28.8. All goods or materials fixed or unfixed on site will be at the sole risk of the Customer. The cost of repairing or replacing any such goods or materials and any of the Contract works which are lost, damaged, or destroyed, from whatever cause, will be charged by us as additional

28.9. Notwithstanding any agreed terms of payment the ownership of the goods shall not transfer unless all materials supplied and all work done shall have been paid for in full.

28.10. We will not, however, accept responsibility for loss or damage to our materials on site for any reasons whatsoever unless such loss or damage occurs whilst we ourselves are physically handling the goods on site.

28.11. All plant brought to the site will remain the property of PURE POWER at all times.

## **29. PRICING AND QUOTATIONS**

29.1. Prices are based upon costs of goods, materials, labour, sub-contracts, transport, taxes and duties ruling at date of tender and on work being undertaken during normal working hours and conditions as laid down by the recognised wage fixing body of the trade concerned. PURE POWER reserves the right to amend prices to take account of any variation in these costs or the imposition of any new taxes or duties occurring from whatever cause between date of tender and completion of the Contract.

29.2. The Customer will, in addition, pay for any work:

29.2.1. carried out by PURE POWER at their request not being work which PURE POWER originally contracted to undertake, or

29.2.2. required as a result of any matter or thing which, at date of tender, PURE POWER did not know existed and which PURE POWER could not reasonably have foreseen, or

29.2.3. arising from any inadequate or inaccurate instructions or drawings given to PURE POWER by the Customer or arising from the Customer failing to comply with any of the Contract Terms.

29.2.4. any additional costs payable by the Customer as a result of the matters specified in Clause 29.2 or any variation or additional work required, ordered or approved by, or on behalf of, the Customer will, where not previously agreed, be charged at rates (together with a percentage in respect of overheads and profit) based upon cost of goods, materials, labour, sub-contracts, transport duties and taxes prevailing at the time work is carried out in accordance with the "Denition of Prime cost of Day Work" issued by the RICS and ECA as appropriate, current at the time the work is carried out. The appropriate percentage addition for incidental costs, overheads and profit will be advised at the same time.

29.2.5. it is incumbent upon the Customer to confirm any variation in writing and wherever possible, agree the appropriate rates prior to commencement of the variation works.

29.2.6. tender prices do not include Value Added Tax.

29.3. Unless otherwise expressly stated PURE POWER's price is open for acceptance for 30 days from the date of quotation. Notwithstanding this, PURE POWER will be reimbursed by the equipment owner or his agents for the net cost to PURE POWER of any additional Government tax, surcharge or other statutory imposition, which may apply to the work during the currency of the agreement.

## **30. DETAILS**

30.1. All drawings, illustrations in catalogues, price lists and other advertising materials must be treated as approximate representations only and are not binding in detail and none shall form the part of a contract.

## **31. ON SITE MEASUREMENTS**

31.1. PURE POWER will undertake on site measurements during an initial site visit for which PURE POWER may, at PURE POWER's sole discretion levy a charge. Thereafter, charges will be made for each subsequent visit and a reasonable delivery time will have to be allowed from the time when on site measurements are finalized which allow PURE POWER's designs to be completed.

### **32. DELIVERY AND COMPLETION**

32.1. Any delivery times quoted by PURE POWER for completion of Contract works are from the date of receipt by PURE POWER of full and final instructions in the form of a purchase order or email instruction and are subject to:

32.1.1. the receipt of all requisite information,

32.1.2. sufficient and suitable availability and access to the works area to allow PURE POWER to proceed

32.1.3. any preparatory work by others including the main contractor being sufficiently advanced and electricity supplies being available as reasonably required by PURE POWER

32.1.4. our not being hindered or prevented from delivering the goods by any cause whatsoever beyond PURE POWER's control including but not limited to, strikes, lock outs, civil commotion, riot.

In any such event, the sub-contract period shall be extended by such time as PURE POWER may reasonably require.

32.2. PURE POWER will endeavour to complete the contract or deliver goods or materials within the time agreed and, if no time is agreed, within a reasonable time but in no circumstances, will PURE POWER be liable for loss or damage of any kind whatsoever caused, directly or indirectly, if completion of the Contract or delivery of goods or materials is delayed by reason of any cause whatsoever and whenever occurring beyond our control, including but not limited to any Act of God, war, national emergency, Act of Parliament, order, regulation or bye-law under any statutory authority, industrial dispute, strike, lock-out, civil commotion, fire, tempest, flood, or failure to deliver or delay in delivery by any of our suppliers from whatever cause arising, nor will delay arising from any such cause entitle the Customer to terminate or rescind the contract, withhold payment, raise contra charges or claim liquidated damages.

32.3. If PURE POWER incurs any loss and/or expense by reason of the progress of the works being impeded by any act of default not of PURE POWER's making or by delay on part of contractors, then the amount of such loss and/or expense shall be added to the contract sum.

32.4. PURE POWER will not be liable for consequential loss or damage, whether by way of indemnity, breach of contract, tort, or otherwise, for loss of contracts, loss of profits, loss of use, loss of production, or for any economic or consequential loss.

### **33. CUSTOMER'S DEFAULT**

33.1. If at the date(s) specified for delivery, the Customer delays the acceptance of the contract goods for reasons outside of our control the goods will be stored by PURE POWER but the Customer will pay us an amount equivalent to what would have been payable if the goods had, in fact been delivered and (when applicable) included in any certificate referred to above in Clause 5 (Payment Terms).

33.2. In addition, the Customer will be liable to pay reasonable storage charges for the period of delay plus the cost of any additional handling and transport incurred. Alternatively, at PURE POWER's option PURE POWER may, by giving fourteen days notice in writing, cancel the contract

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or any balance of the contract remaining unfulfilled on the date of the expiry of such notice in writing when we shall be entitled to recover from the Customer as damages, any loss, expense or other damage suffered by us as a result of such cancellation.

### **34. CHANGES IN QUANTITIES**

34.1. Changes in quantities may result in increases in unit prices with possible delays in delivery. The right is reserved to manufacture and dispatch in economic loads.

34.2. Unless otherwise stated:

34.2.1. it is envisaged that PURE POWER will complete the Engagement in the number of visits stated and any further visits required by the Customer, for reasons beyond our control, will be additional to the Contract Sum at the rates stated in the original quotation or within the PURE POWER Short Form Contract.

### **35. VARIATIONS AND CANCELLATIONS**

35.1. No variations or additional works are to be undertaken without the written confirmation of the Customer and without prior agreement of a value or a method of valuing such variations or additional works.

35.2. Cancellation will only be accepted on the understanding that all costs incurred will be reimbursed in full together with loss in contribution and profit; such costs will be calculated from the date of receipt of the letter of intent or official order, whichever is the earliest to the date of cancellation which is to be provided in writing to take effect. A minimum charge of 15% of the contract value will be levied where materials have been procured.

35.3. A charge will be made for any additional drawing office detailing shop work and materials involved if variations are made. Any delivery commitments previously entered into will be void.

35.4. PURE POWER's price includes for supplying two copies of any one drawing produced by PURE POWER. Should any greater quantity be required for circulation the right is reserved to charge for these additional copies.

### **36. TESTING**

36.1. Testing of equipment in terms of frequency and scope will be undertaken in accordance with the relevant British or other Standards and documented accordingly.

### **37. COMPLIANCE WITH OFFICIAL REQUIREMENTS AND BUILDING SUITABILITY**

37.1. It is a condition of any contract that PURE POWER's Customers undertake without charge to PURE POWER to comply with any statute, order in council, decree, regulation, bye-law or other requirement for the time being in force of any Government department, municipality or other competent authority. If, owing to the Customer's failure to comply with this condition, PURE POWER incurs any loss or expense the Customer will be liable to reimburse PURE POWER the full amount thereof.

37.2. All materials, methods of fixing and testing used by PURE POWER are in accordance with the relevant BS, LOLER or other applicable standards.

37.3. It is the Customer's responsibility to ensure that the building is suitable for the proposed works i.e. approval of fixings to the building structure, loadings etc. which will be shown on our layout or detail drawings for the contract.

### **38. TRANSFER OF GUARANTEE OR WARRANTY**

38.1. So far as PURE POWER reasonably can, PURE POWER will transfer or make over to the Customer, the benefit of any guarantee, warranty, or free service or maintenance commitment which may have been given by the manufacturer or any other person in respect of goods or materials, the subject of the contract which are not made by PURE POWER.

If, during the period of six months from completion of the Contract, any goods or materials manufactured or any works carried out by PURE POWER, is found, upon inspection by or for PURE POWER, to be defective under normal use and service and where the contract is for supply only of goods when properly installed and connected by the Customer PURE POWER may, free of cost, repair, or if PURE POWER so wishes, replace that part of the Contract Work which has been so found to be defective provided PURE POWER are notified, in writing, as soon as possible after discovery of the defect.

Where the Contract is for the supply only of goods, the defective part is to be returned, carriage paid, to PURE POWER and any cost or expenses incurred by PURE POWER or any other person in dismantling or re-assembling must be borne by the Customer. PURE POWER will not, however, be liable to repair or replace as aforesaid if the contract work has not been properly maintained in accordance with PURE POWER's recommended maintenance procedure or has been subject to any misuse, unauthorised repair, replacement, modification or alteration, nor will PURE POWER be so liable.

38.1.1. in respect of any equipment which has not been commissioned by PURE POWER and hand-over Certificate Issued to the Customer, or

38.1.2. arising from any goods or materials supplied or installation work carried out under this Contract being put into operation by the Customer or by PURE POWER at their request before completion of the contract work, or

38.1.3. as a result of frost or other extremities of weather or temperature.

Provided always that where the Customer is in relation to the contract dealing as a consumer as defined in the Unfair Contract Terms Act 1977 any condition or stipulation in this Clause 38.1 which may be void against not be included and the Customer's statutory rights against PURE POWER in relation to goods and materials shall remain unaffected.

38.2. Save as aforesaid, under no circumstances will PURE POWER, PURE POWER's agents, servants or subcontractors, be liable for any loss or damage of any kind whatsoever (except personal injury or death resulting from PURE POWER's, or PURE POWER's agents', servants' or sub-contractors', negligence) arising out of or caused, directly or indirectly, by any defect or omission in the contract work or by any negligence on our part or on the part of our servants, agents or sub-contractors and all warranties and conditions, express or implied, statutory or otherwise, hereby expressly excluded provided always that such exclusion of liability so far as it relates to defects in goods and materials supplied under the contract shall not apply where the Customer is in relation to the Contract dealing as a consumer (defined as aforesaid). If the Customer is so dealing, then his statutory rights against us in relation to such goods and materials shall remain unaffected.

38.3. Without prejudice to the generality of the foregoing, PURE POWER will, in no circumstances, accept any responsibility for or liability in respect of or be deemed to have given any warranty or guarantee in respect of the efficient operation or technical design of any plant or equipment which has been acquired by the Customer or any other person otherwise than under this contract as a result of or arising from the installation, dismantling, repositioning, repairing, or maintaining by us of such plant or equipment.

38.4. Without prejudice to the generality of any of the other Contract Terms, the Customer will indemnify PURE POWER against all claims, costs, proceedings, demands or liability incurred by or made against PURE POWER,

38.4.1. which arise from any services carried out by PURE POWER which result directly, or indirectly, partially or wholly, from any act or omission of the Customer or any other person; or,

38.4.2. arising or resulting from the death or of injury to any of PURE POWER's agents, servants or sub-contractors while they are on site (being the place, wherever that may be, other than our own premises, where such person or persons are performing services for the Customer) howsoever caused otherwise than wholly through PURE POWER's, or PURE POWER's agents', servants or sub-contractors' negligence.

### **39. QUALITY OF GOODS AND STANDARD OF WORKMANSHIP**

39.1. Should any defects in goods or workmanship not due to fair wear and tear or to improper use or care, supplied by PURE POWER appear within twelve months from the date when the same were fixed or work executed, we will make good the defects which may develop either by replacement or, at PURE POWER's option repair, provided that PURE POWER have received written notice of such defects and the claim in respect thereof is made within twelve months of the goods being fixed or the work being executed.

39.2. PURE POWER's liability under this Clause shall be in lieu of any warranty or conditions implied by law as to the quality or fitness for any particular purpose of the goods and save as provided in this Clause, PURE POWER shall not be under any liability whether in contract, tort or otherwise in respect of defects in goods delivered or for any damage or loss resulting from such defect or from any work done in connection therewith.

39.3. The Customer on their part warrants and agrees to indemnify PURE POWER and hold PURE POWER harmless from any liability or claims for injury or death of any person or persons always provided such liability arises otherwise than by the acts of omissions of PURE POWER, PURE POWER's agents, servants and sub-contractors and for damages to the property of any person arising out of or alleged to be caused by the use of the goods whether fixed or not.

39.4. In the case of goods supplied but not manufactured by PURE POWER, PURE POWER's liability is limited to such rights as PURE POWER may have against PURE POWER's supplier and/ or the manufacturer

39.5. The re-test date stated on the test certificate supplied at the time of installation shall not have passed without a re-test by a competent person, being carried out.

39.6. Payment for the goods and all services have been made within the agreed terms and provisions.

### **40. LOSS OR DAMAGE IN TRANSIT**

40.1. PURE POWER are not to be under any liability to replace or repair goods lost or damaged in transit unless written notice shall have been given to both the carrier and to PURE POWER, in the case of non-delivery within ten days of the date of dispatch as indicated on PURE POWER's advice note and in the case of damage or shortage within three days of receipt.

### **41. DESIGN LIABILITY**

41.1. Where any goods or materials are manufactured and/or installed to the design drawings or specification of the Customer, the fact that PURE POWER has undertaken to carry out the contract work on the basis thereof, does not constitute any warranty, guarantee or representation of the practicability of construction of or the efficiency, safety or otherwise of materials to be supplied or work to be executed by PURE POWER in accordance therewith.

41.2. PURE POWER shall be under no liability whatsoever to the Customer

41.2.1. where any of our suppliers varies the specification of goods or materials forming the whole or part of the contract work and we then supply to the Customer goods or materials similar to be not the same as the goods and materials specified in the Contract.

41.3. Copyright (together with all and any other intellectual property rights which may exist therein) to all and any drawings, designs, plans, specifications or other documentation or materials provided or supplied or otherwise made available by us to the Customer is owned by and vested in us and no part of the whole thereof may be reproduced in any form without the prior consent in writing of us. The doing of an unauthorised act in relation to a copyright work may result in both criminal proceedings or a civil claim for damages.

## **42. SERVICES REQUIRED**

42.1. It is a condition of any sub-contract awarded to PURE POWER that unless otherwise expressly stated, the main contractor will accept full responsibility, free of charge to PURE POWER, for the items listed in PURE POWER's quotation and for which no allowance has been made in PURE POWER's pricing.

42.2. In the case of access equipment, the equipment owner or his agent will provide, free of charge to PURE POWER the following services:

42.2.1. safe and unimpeded access to the installed position of the equipment.

42.2.2. a 110/240V single phase supply within 10m of the equipment.

42.2.3. a warranty that associated electrical or other apparatus not forming part of or covered by PURE POWER's quotation shall be safe and properly maintained.

## **43. WORKPLACE REGULATIONS**

43.1. PURE POWER's price is based on the understanding that provisions on site will be made free of charge to PURE POWER for the use of all equipment and facilities to enable PURE POWER to comply with the Workplace (Health, Safety and Welfare) Regulations 1992 and any other relevant statutory provisions and all regulations, orders, bye-laws, and other provisions and any modification of the same, or any of them for the time being in force.

## **44. PROGRAMME OF WORK**

44.1. A complete programme of site work must be agreed as soon as possible after the placing of an order. Any changes to this programme must be agreed and we will require fourteen days clear notice before we commence fixing. If the Customer does not comply with an agreed programme we shall be entitled to recover any additional costs arising as a result thereof.

44.2. Any date given by PURE POWER for completion of the works is for the Customer's convenience only and shall not make time the essence of the contract. PURE POWER will use its best endeavours to ensure that the works are completed within a reasonable timeframe but will not be liable for any delayed caused.

## **45. SITE ACCESS**

45.1. PURE POWER's quotations are based on the understanding that a clear site with adequate working space will be provided and that working conditions and facilities will allow any agreed phase of work to be completed in one operation during normal working hours. If these conditions are not met the Customer will be liable for an additional charge.

45.2. PURE POWER reserves the right to recover any costs associated with any items found during the course of the works, which could have safety or operational implications, which come to PURE POWER's attention and were not apparent at the time of submission of PURE POWER's quotation.

45.3. The Customer will, at their own expense, provide:

45.3.1. at whatever place on the site PURE POWER may require, adequate and appropriate equipment and manual assistance and offloading goods, material and construction plant, together with same covered storage for same and a workshop or suitable space for work benches and fixed tools, and,

45.3.2. convenient access to and about the site on roads or surfaces satisfactory for transporting the weight of goods, materials and constructional plant involved, and,

45.3.3. artificial lighting and 110 volt electric supply of suitable current for tools, motors and welding plant fuel, water and gas, scaffolding, scaffold towers, ladders to all working areas and lightning appliances.

45.3.4. first aid, shelter and accommodation for clothing and meals, washing and sanitary facilities.

45.4. Where craneage forms part of PURE POWER's offer, this is contingent upon PURE POWER being able to obtain permission from the appropriate authorities for the siting and use of a crane and upon suitable hard standing of sufficient load bearing capacity being made available for it.

45.5. It is a further condition that, should PURE POWER be prevented from carrying out the craneage operations on the allotted dates due to circumstances beyond PURE POWER's control, including but not limited to, unsuitable weather conditions, then the period required for carrying out our works will be extended by such time as PURE POWER may reasonably require.

45.6. Further, any prices that PURE POWER have quoted for ancillary works, such as road closures, traffic management et al are provisional only and are subject to adjustment in PURE POWER's account on the basis of actual cost +20%.

#### **46. WORKING HOURS**

46.1. PURE POWER's normal engineering hours of working are:

46.1.1. 08:00 to 16:30 Monday to Friday.

46.2. Outside normal hours of working are:

46.2.1. 16:31 to 07:59 Monday to Sunday.

#### **47. DELAYS BY OTHER TRADES**

47.1. No allowance is made in PURE POWER's quotations for delays caused by other trades and lost time will be charged at PURE POWER's day work rate referred to in the original quotation or any accompanying Short Form Contract.

#### **48. SUPERVISION**

48.1. PURE POWER accepts no responsibility for works carried out otherwise than under PURE POWER's direct supervision or for damage caused to buildings by other building operators.

#### **49. HIDDEN OBSTRUCTIONS**

49.1. The execution of PURE POWER's works shall be on the basis that PURE POWER's Customer has disclosed to PURE POWER details of all cables, ducts, obstructions, pipework and the like which may reasonably be expected to be found at PURE POWER's nominated fixing positions. No liability will be accepted by PURE POWER for damage caused by PURE POWER operatives to any obstruction unless their locations have been disclosed to PURE POWER in writing in advance at quotation stage. Where obstructions are found that have not been disclosed to PURE POWER at the time of issuing the quotation PURE POWER reserves the right to modify fixing methods, locations and prices accordingly.

#### **50. EXCLUSIONS**

50.1. Unless specifically agreed to the contrary in writing any express or implied conditions, statements or warranties, statutory or otherwise are hereby excluded

#### **51. ASSIGNMENT**

51.1. PURE POWER will be entitled, without notification to the Customer, to assign sub-contract or sublet this contract or any part thereof