

ASPECT ELECTRICAL LIMITED TERMS AND CONDITIONS OF SALE – MAY 2023 v1.3jc

1. DEFINITIONS

In these Terms and Conditions of Sale, "Seller" means Aspect Electrical Critical Power Services (AECPS) or other similar Trading Style of Aspect Electrical Limited, registered in England as company number 04777645; "Buyer" means the person, firm, group or corporation by whom the order or instruction is given; "Goods" means the goods, products, and equipment either as component parts or completed assemblies as described in Seller's Offer and/or Order Acknowledgement form; "Services" means Services and/or Installation works as described in Seller's Offer and/or Order Acknowledgement form; "Contract" means any written agreement (including these Terms and Conditions) made between Buyer and Seller for the supply of the Goods and/or provision of Services; "Contract Price" means the price payable to Seller by Buyer for the Goods and/or Services; "Website" means the registered internet sites operated by Aspect Electrical Critical Power Services namely www.aecps.com, www.aecps.co.uk, www.aecps.net or other associated sites from time to time; "Writing" / "Written" means any communication or notification in electronic email, or conventional hard copy, delivered to registered Seller addresses.

2. THE CONTRACT

- All orders and instructions must be in writing and are accepted by the Seller subject to these Terms and Conditions of Sale. No terms or conditions put forward by Buyer and no representations, warranties, guarantees or other statements not contained in Seller's quotation or Acknowledgement of Order nor otherwise agreed in writing by Seller shall be binding on Seller.
- The Contract shall become effective only upon the date of acceptance of Buyer's order on Seller's Acknowledgement of Order form or upon the date of fulfilment of all conditions precedent stipulated in the Contract, whichever is the later (the "Effective Date"). If details of the Goods or Services described in Seller's quotation differ from those set out in Acknowledgement of Order Form, the latter shall apply.
- No alteration or variation to the Contract shall apply unless agreed in writing by both parties. Seller reserves the right to effect minor modifications and/or improvements to the Goods before delivery if performance of the Goods is not adversely affected and that neither the Contract Price nor the delivery date is affected.
- All orders are subject to Seller's satisfaction that Buyer is creditworthy and Seller's determination of acceptable payment methods, terms and banking arrangements.

3. VALIDITY OF QUOTATION AND PRICE

- Unless previously withdrawn, Seller's quotation is open for acceptance within the period stated therein. When no period is stated, within thirty days after its issue date
- Prices are firm for delivery within the period stated in Seller's quotation and are exclusive of (i) Value Added Tax and (ii) any similar and other taxes, duties, levies or other like charges arising either within or outside the United Kingdom in connection with the performance of the Contract.
- Prices for Services unless specifically quoted otherwise assume normal working hours Monday to Friday and exclude weekends, overnights, and Public Holidays.
- Pricing for Services and Installation work include for the completion of the works as described within the quotation, and do not include production samples, repeat testing, or witnessed verifications other than required at the conclusion of each work stage. Repeated & return visits for such works will incur additional costs.
- The Seller's quotation document provides full detail of the Goods, Services and Installations being offered. Items or services not specifically detailed and costed are excluded from the supply scope

4. PAYMENT

- Payment shall be made in full without set-off, counterclaim or withholding of any kind (save where and to the extent that this cannot by law be excluded); and within 30 (thirty) days of date of invoice unless otherwise specified by Seller's Finance Department and agreed in writing. Goods will be invoiced in accordance with the payment schedule specified in Seller's quotation unless agreed otherwise. Services and Installation will be invoiced monthly in arrears or, if earlier, upon completion. Without prejudice to Seller's other rights, Seller reserves the right to: (i) charge interest on any overdue sums at 4% above the base lending rate of Barclays Bank plc (or such higher rate stipulated by applicable law) during the period of delay; (ii) suspend performance of the Contract (including withholding shipment) in the event that Buyer fails or in Seller's reasonable opinion it appears that Buyer is likely to fail to make payment when due under the Contract or any other contract; and (iii) at any time require such reasonable security for payment as Seller may deem reasonable.
- Buyer is not entitled to withhold any payment/part payment of any invoice by reason of any right of set-off or any claim, in relation to any current or previous contracts.

5. DELIVERY PERIOD

- Unless otherwise explicitly stated in Seller's quotation, all periods stated for delivery or completion run from the Effective Date and are to be treated as estimates and being subject to timely document or process approvals, timely and timely payments.
- If Seller is delayed in, or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer or its agents (including but not limited to failure to provide or to arrange timely and unhindered access to the works area, failure to provide specifications and/or fully dimensioned working drawings and/or such other information as Seller reasonably requires to proceed expeditiously with its obligations under the Contract), the delivery/completion period and the Contract Price shall both be adjusted accordingly.
- If delivery is delayed due to any act or omission of Buyer, or Buyers third parties, or if having been notified that the Goods are ready for despatch, Buyer fails to take delivery or provide adequate shipping instructions, Seller shall be entitled to place the Goods into a suitable store at Buyer's expense. Upon placing the Goods into the store, delivery shall be deemed to be complete, risk in the Goods shall pass to Buyer and Buyer shall pay Seller accordingly.
- If the Goods are placed and remain in storage for more than 90 days, additional maintenance, calibration, recharging, re-certification and testing charges shall apply.

6. FORCE MAJEURE

- The Contract (other than Buyer's obligation to pay all sums due to Seller in accordance with the Contract) shall be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the party affected, including but not limited to: Act of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, sabotage; governmental decisions or actions (including but not limited to prohibition of exports or re-exports or the failure to grant or the revocation of applicable export licenses), or labour trouble, strike, lockout or injunction.
- If either party is delayed or prevented from performance of its obligations by reason of this Clause for more than 180 calendar days, either party may terminate the then unperformed portion of the Contract by notice in writing given to the other party, without liability provided that Buyer shall be obliged to pay the reasonable cost and expense of any work in progress and to pay for all Goods delivered and Services performed as at the date of termination. Seller may deliver by instalments and if so each delivery shall constitute a separate contract and failure by Seller to deliver any one or more of the instalments in accordance with their terms shall not entitle Buyer to terminate the whole Contract or treat it as repudiated.

7. INSPECTION, TESTING, AND CALIBRATION

- Goods will be inspected by Seller or manufacturer. Any additional tests or inspection (including inspection by Buyer or its representative, or tests in the presence of Buyer or its representative and/or calibration) or the supply of test certificates and/or detailed test results shall be subject to Seller's prior written agreement and charges shall apply. If Buyer or its representative fails to attend such tests, inspection and/or calibration after seven days' notice that the Goods are ready therefor, the tests, inspection and/or calibration will proceed and shall be deemed to have been made in the presence of Buyer or its representative and the Seller's statement that the Goods have passed such testing, inspections or calibration shall be conclusive.
- Claims for either shortfalls in quantity, quality or for incorrect delivery must be made immediately, and in any case shall be void if made more than 14 days after delivery.

8. DELIVERY, RISK & TITLE

- Unless otherwise expressly stated in the Contract, the Goods will be delivered Carriage Paid To (CPT) the destination named in the Contract; freight, packing and handling will be charged at Seller's standard rates. Risk of any loss of and/or or damage to the Goods shall pass to Buyer upon delivery and Buyer shall be responsible for insurance of the Goods after risk has so passed.
- Title to the Goods shall pass to Buyer only once payment in full has been received by the Seller.

9. DEFECTS AFTER DELIVERY

- Seller warrants (i) subject to the other provisions of the Contract, good title to and the unencumbered use of the Goods; (ii) that Goods provided by Seller shall be free of defects in materials and workmanship and (iii) that Services and/or Installation works provided by Seller or Seller Affiliates will be performed with all reasonable skill, care and due diligence and in accordance with good engineering practice. Seller will make good, by repair or at Seller's option by the supply of a replacement part or parts, any defects which, under proper use, care and maintenance, appear in Goods of Seller's Affiliates' supply and which are reported to Seller within 12 calendar months from putting such Goods into operation (the "Warranty Period") and which arise solely from faulty materials or workmanship. Replaced items shall become the property of Aspect Electrical Critical Power Services. Repaired or replacement items will be delivered by Seller at Seller's cost to Buyer's mainland site in the United Kingdom or, if Buyer is located outside the United Kingdom, FCA in the United Kingdom. Seller will correct defects in Services or Installations provided by Seller or Seller Affiliates and reported to Seller within ninety days after completion of such Services. Goods or Services repaired, replaced or corrected in accordance with this Clause 9a shall be subject to the foregoing warranty for the unexpired portion of the Warranty Period or for ninety days from the date of their return to Buyer (or completion of correction in the case of Services), whichever expires the later.
- Goods or Services sourced by Seller from a third party for resale to Buyer shall carry only the warranty extended by the original manufacturer.
- Notwithstanding Clauses 9a and 9b, Seller shall not be liable for any defects caused by: fair wear and tear; materials or workmanship made, furnished or specified by Buyer; non-compliance with manufacturers storage, installation, operation or environmental requirements; lack of proper maintenance; modification or repair not previously authorised by Seller in writing; nor the use of non-authorized spare or replacement parts. Seller's costs incurred in investigating and rectifying such defects shall be paid by Buyer upon demand. Buyer shall at all times remain solely responsible for adequacy and accuracy of all information supplied.
- Subject to Clause 10a, the foregoing constitutes Seller's sole warranty and Buyer's exclusive remedy for breach thereof. No representations, warranties, or conditions of any kind, express or implied, shall apply as to satisfactory quality, merchantability, fitness for any particular purpose or any other matter with respect to any of the Goods or Services.

10. LIMITATION OF LIABILITY

- Notwithstanding any other provision of the Contract, but subject to Sub-clause 10b, and without prejudice to Sub-clause 10d, Seller's and Seller's Affiliates' combined maximum aggregate liability for any and all losses, liabilities, expenses (including legal expenses), damages, claims or actions incurred under or in connection with this Contract or any collateral contract between the parties, arising in or by virtue of breach of contract, tort (including negligence), misrepresentation, breach of statutory duty, strict liability, infringement of Intellectual Property Rights or otherwise, shall in no circumstances exceed: (i) £1,000,000 for loss of or damage to physical property, and (ii) in all other cases, the Contract Price, in either case.
- Notwithstanding any other provision of the Contract but without prejudice to Sub-clause 10d, the Seller, Seller's representatives, agents or suppliers shall not be liable

- under or in connection with this Contract or any collateral contract between the parties, for any: (i) loss of income; (ii) loss of actual or anticipated profits; (iii) loss of anticipated savings; (iv) increased costs of any kind; (v) loss of business; (vi) loss of contracts; (vii) loss of goodwill or reputation; (viii) loss of, damage to or corruption of data; (ix) claims of Buyer's Buyers or (x) any indirect or consequential loss or damage of any kind, howsoever caused and whether arising in or by virtue of: breach of contract; (ii) tort (including negligence); (iii) misrepresentation; (iv) breach of statutory duty; (v) strict liability; whether or not such loss or damage was foreseeable or in the contemplation of the parties.
- c) Whilst undertaking Services, Installations or testing within either the Buyers sites, or other such locations as defined or instructed by the Buyer, during interfacing of such works and services with products, systems or services installed or in the vicinity of works, Seller shall not be liable for any: loss of income; (ii) loss of actual or anticipated profits; (iii) loss of anticipated savings; (iv) increased costs of any kind; (v) loss of business; (vi) loss of contracts; (vii) loss of goodwill or reputation; (viii) loss of, damage to or corruption of data; (ix) claims of Buyer's Buyers or (x) any indirect or consequential loss or damage of any kind, whether to equipment, products, systems or services howsoever caused and whether arising in or by virtue of: (i) breach of contract; (ii) tort (including negligence); (iii) misrepresentation; (iv) breach of statutory duty; (v) incorrect or unclear operation, warning or maintenance instructions (v) strict liability; whether or not such loss or damage was foreseeable or in the contemplation of the parties.
- d) Nothing in this Contract or any collateral contract shall exclude or in any way limit Sellers liability (i) for fraud, (ii) for death or personal injury caused by Seller's negligence (including negligence as defined in the Unfair Contract Terms Act 1977), (iii) for breach of terms implied as to title by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982, or (iv) for any liability to the extent that such liability may not be limited or excluded as a matter of law.

11. STATUTORY AND OTHER REGULATIONS

- a) If Seller's obligations under the Contract shall be increased or reduced by reason of the making or amendment after the date of Seller's quotation of any law or any order, regulation or bye-law having the force of law that shall affect the performance of Seller's obligations under the Contract, the Contract Price and delivery period shall be adjusted accordingly and/or performance of the Contract suspended or terminated, as appropriate.
- b) Except to the extent otherwise required by applicable law, Seller shall have no responsibility for the collection, treatment, recovery, or disposal of (i) the Goods or any part thereof when they are deemed by law to be 'waste' or (ii) any items for which the Goods or any part thereof are replacements.
- c) If Seller is required by applicable law, including waste electrical and electronic equipment legislation, (WEEE) to dispose of 'waste' Goods or any part thereof, Buyer shall unless prohibited by applicable law, pay Seller, in addition to the Contract Price Seller's costs (including all handling, transportation and disposal costs and a reasonable mark-up for overhead) incurred in disposing of such Goods whether supplied as part of the Contract, or previously installed.

12. COMPLIANCE WITH LAWS

- a) Buyer agrees that all applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time, including without limitation those of the United Kingdom, the European Union and the jurisdictions in which Seller and Buyer are established or from which items may be supplied, and the requirements of any licenses, authorisations, general licences or licence exceptions relating thereto will apply to its receipt and use of hardware, software, services and technology.
- b) In no event shall Buyer use, transfer, release, export or re-export any such hardware, software or technology in violation of such applicable laws, regulations, orders or requirements or the requirements of any licences, authorisations or licence exceptions relating thereto.
- c) Buyer agrees furthermore that it shall not engage in any activity that would expose the Seller or any of its affiliates to a risk of penalties under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or political party officials or candidates for public office, or to any employee of any Buyer or supplier. Buyer agrees to comply with all appropriate legal, ethical and compliance requirements.

13. DEFAULT, INSOLVENCY AND CANCELLATION

- a) Seller shall be entitled, without prejudice to any other rights it may have, to cancel the Contract forthwith, wholly or partly, by notice in writing to Buyer, if (a) Buyer is in default of any of its obligations under the Contract and fails, within 30 (thirty) days of the date of Seller's notification in writing of the existence of the default, either to rectify such default if it is reasonably capable of being rectified within such period or, if the default is not reasonably capable of being rectified within such period, to take action to remedy the default or (b) on the occurrence of an Insolvency Event in relation to Buyer.
- b) "Insolvency Event" in relation to Buyer means any of the following: (i) a meeting of creditors of Buyer being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being proposed by or in relation to Buyer; (ii) a charge holder receiver, administrative receiver or similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of Buyer; (iii) Buyer ceasing to carry on business or being unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (iv) Buyer or its directors or the holder of a qualifying floating charge giving notice of their intention to appoint, or making an application to the court for the appointment of, an administrator; (v) a petition being presented (and not being discharged within 28 days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of Buyer; or (vi) the happening in relation to Buyer of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.
- c) Seller shall be entitled to recover from Buyer or Buyer's representative all costs and damages incurred by Seller because of such cancellation, including a reasonable allowance for overheads and profit (including but not limited to loss of prospective profits and overheads).
- d) The Buyer may only cancel an Order with the Sellers prior written consent (at the Seller's sole and absolute discretion). The Seller will refuse to accept any Goods returned to the

- Seller without prior written permission. Non-stock, custom-made or modified products are non-returnable. This includes any goods manufactured, cut from larger goods or formed to specific lengths, sizes or shapes.
- e) Goods can only be returned by the Buyer following authorisation in writing from the Seller. Goods must be returned to Seller within 7 days of date of authorisation.
- f) All Returned goods shall be subject to a minimum administration/restocking charge of 30% of the total value of the Goods. The Seller shall be entitled to deduct the restocking fee for any returned item that is not in a resaleable condition, has been used or is not in its original condition and packaging.
- g) The Seller shall also be entitled to deduct from any refund given by the Seller to the Buyer for such Goods the cost of delivery of the Goods to the Buyer. Acceptance of any cancellation by the Seller shall be without prejudice to any liabilities which have arisen under these conditions prior to acceptance of cancellation and are subject to the Goods being returned packaged in the same manner as they were originally sent.

14. MISCELLANEOUS

- a) No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.
- b) If any provision of the Contract is invalid under any statute or rule of English law, such provision, to that extent only, shall be omitted without affecting the validity of the remainder of the Contract.
- c) Buyer shall not be entitled to assign its rights or obligations hereunder without the prior written consent of Seller.
- d) Seller enters into the Contract as principal. Buyer agrees to look only to Seller for due performance of the Contract.
- e) The Contract shall in all respects be construed in accordance with the laws of England. All disputes arising out of the Contract shall be subject to the exclusive jurisdiction of the English courts.
- f) The headings to the Clauses and paragraphs of the Contract are for guidance only and shall not affect the interpretation thereof.
- g) All notices and claims in connection with the Contract must be in writing.
- h) The Terms and Conditions herein are the entire terms and conditions that shall apply to the Contract unless agreed otherwise in writing by the Seller.
- i) Buyer shall indemnify Seller against all and any claims arising out of any instruction given by the Buyer save where the claim arises from the negligent acts of the Seller.

15. SERVICES, SITE WORKS AND INSTALLATION

- a) Buyer warrants that when Seller is required to provide installation, commissioning, inspection maintenance, repairs and other Services, the Seller will be provided free, unhindered and easy access, a healthy and safe environment and all utilities including power to carry out and complete such Service works.
- b) Unless specifically detailed within the works deliverable scope, 'Design' responsibility shall be limited to the Installation Services immediately connected to and from any Goods provided by, and/or installed as part of the contract scope. The Goods shall be installed in accordance with all applicable regulations and good practices, including local regulations in force at the time.
- c) A minimum of 2 working weeks' notice in writing shall be provided by the Buyer to the Seller for commencement, continuation or attendances associated with any Services or Installation works. If less than this notice period is provided, the Buyer acknowledges that availability for the dates of times requested cannot be guaranteed by the Seller.
- d) Once schedules are agreed to complete site works or elements thereof as Section 15b above, the dates or times are considered fixed. If alteration or postponement of the works occurs, the Buyer accepts that charges for rescheduling will apply if this amendment occurs within 1 week of the proposed works commencement date.
- e) With respect to clause 15c and 15d above, the Buyer will accept that should alternative dates or times for such works be proposed by the Buyer, support of the same by the Seller will be on a best endeavours basis and will always be subject to suitable engineering availability.
- f) Services and Installations works shall be tested at the completion of the contract work or individual works elements, with prior notice provided to the Buyer for their attendance if required. If Buyer or their representative fails to attend such tests, the inspection and/or calibration will proceed and shall be deemed to have been made in the presence of Buyer with all such tests recorded.
- g) Using information provided by the Buyer, the Seller has made allowance for enablement works at the contract commencement such as surveys, confirmatory calculations, plant delivery, method statements, safety inductions and meetings
- h) Unless specifically advised by the Buyer (and quoted for the same) the Seller assumes completion as a continuous process with a single enablement and conclusion, detailed as a 'prelims' element in quotations. If works are subsequently delivered in multiple phases, additional costs will apply.
- i) Should the Buyer require any site-specific processes or requirements to be followed (such as training course attendances, industry body membership, specialist PPE purchase etc), the cost and time impacts of these shall be borne by the Buyer unless notified and included within the Sellers original quotation.
- j) Unless the Seller has specifically Quoted for, and the Buyer has instructed the Seller to undertake the role of "Principal Contractor", Seller shall be defined only as a "Contractor" within the definitions of the CDM (2015) Regulations.
- k) The buyer shall be responsible for providing or arranging for the seller and/or the sellers agents to have the use of all welfare and rest facilities on any work site
- l) Buyer's and Buyers third party personnel shall, whilst on Seller's premises (or within Demised working areas under the control of the Seller elsewhere as defined within CDM 2015 regulations) comply with Seller's applicable site guidelines and Seller's reasonable instructions, including but not limited to those relating to safety and security