

SALES TERMS – SELECT SWITCHGEAR & CONTROL LIMITED

The Customer's attention is particularly drawn to the provisions of clause 12.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.7.

Contract: the contract between SSC and the Customer for the supply of Equipment and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Equipment and/or Services from SSC.

Deliverables: the deliverables set out in the Order.

Equipment: the control panels, switchgear and other equipment (or any part of it) set out in the Order.

Equipment Specification: any specification for the Equipment, including any relevant plans or drawings, that is agreed in writing by the Customer and SSC.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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 extensions of, and rights to claim priority from, such rights 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

Order: The Customer's order for the supply of Equipment and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of SSC's quotation, or overleaf, as the case may be.

Services: the services, including the Deliverables, supplied by SSC to the Customer as set out in the Service Specification below.

Service Specification: the description or specification for the Services provided in writing by SSC to the Customer.

SSC: Select Switchgear and Control Limited registered in England and Wales with company number 6216749 and registered office at Unit 2, 7 Magna Road, Wigston, Leicester, LE18 4ZH.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a reference to a party includes its personal representatives, successors or permitted assigns; and
- (b) a reference to **writing** or **written** includes faxes but not e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when SSC issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of SSC which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by SSC and any descriptions of the Equipment or illustrations or descriptions of the Services contained in SSC's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by SSC shall not constitute an offer, and is only valid for a period of [30] Business Days from its date of issue.

2.7 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

3. EQUIPMENT

3.1 The Equipment is described in the Goods Specification.

3.2 To the extent that the Equipment is to be manufactured in accordance with an Equipment Specification supplied by the Customer, the Customer shall indemnify SSC against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by SSC in connection with any claim made against SSC for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with SSC's use of the Equipment Specification. This clause 3.2 shall survive termination of the Contract.

3.3 SSC reserves the right to amend the specification of the Equipment if required by any applicable statutory or regulatory requirements.

4. DELIVERY OF EQUIPMENT

4.1 SSC shall ensure that:

- (a) each delivery of the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and SSC reference numbers, the type and quantity of the Equipment (including the code number of the Equipment, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Equipment remaining to be delivered; and
- (b) if SSC requires the Customer to return any packaging material to SSC, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as SSC shall reasonably request. Returns of packaging materials shall be at SSC's expense.

4.2 SSC shall deliver the Equipment to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after SSC notifies the Customer that the Equipment is ready.

4.3 Delivery of the Equipment shall be completed on the Equipment's arrival at the Delivery Location.

4.4 Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. SSC shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Customer's failure to provide SSC with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

4.5 If SSC fails to deliver the Equipment at all, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement equipment of similar description and quality in the cheapest market available, less the price of the Equipment. SSC shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event the Customer's

failure to provide SSC with adequate delivery instructions for the Equipment or any relevant instruction related to the supply of the Equipment.

- 4.6 If the Customer fails to accept or take delivery of the equipment, then except where such failure or delay is caused by a Force Majeure Event or by SSC's failure to comply with its obligations under the Contract in respect of the Equipment:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the day on which delivery of the Equipment was attempted; and
 - (b) SSC shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after SSC notified the Customer that the Equipment was ready for delivery the Customer has not taken delivery of them, SSC may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.
- 4.8 SSC may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF EQUIPMENT

- 5.1 SSC warrants that on delivery the Equipment shall:
- (a) conform in all material respects with their description and any applicable Equipment Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Equipment do not comply with the warranty set out in clause 5.1;
 - (b) SSC is given a reasonable opportunity of examining such Equipment; and
 - (c) the Customer (if asked to do so by SSC) returns such Equipment to SSC's place of business at the Customer's cost, SSC shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full.
- 5.3 In the case of any defective Equipment that is not manufactured by SSC, the Customer shall only be entitled to the benefit of any guarantee, condition or warranty which SSC shall have received and only to the extent SSC can enforce the same.
- 5.4 SSC shall not be liable for the Equipment's failure to comply with the warranty in clause 5.1 if:
- (a) the Customer makes any further use of such Equipment after giving a notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow SSC's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice;
 - (c) the defect arises as a result of SSC following any drawing, design or Equipment Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Equipment without the written consent of SSC;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - (f) the Equipment differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.5 Except as provided in this clause 5, SSC shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in clause 5.1.
- 5.6 The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by SSC under clause 5.2.

6. OWNERSHIP AND RISK

- 6.1 The risk in the Equipment shall pass to the Customer on completion of delivery.
- 6.2 Ownership of the Equipment shall not pass to the Customer until SSC receives payment in full (in cash or cleared funds) for the Equipment and any other goods and services that SSC has supplied to the Customer in respect of which payment has become due, in which case ownership of the Equipment shall pass at the time of payment of all such sums.
- 6.3 Until ownership of the Equipment has passed to the Customer, the Customer shall:
- (a) store the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as SSC's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
 - (c) maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price on SSC's behalf from the date of delivery;
 - (d) notify SSC immediately if it becomes subject to any of the events listed in clause **Error! Reference source not found.**13.1(a) to clause **Error! Reference source not found.** 13.1(d); and
 - (e) give SSC such information relating to the Equipment as SSC may require from time to time.
- 6.4 If before ownership of the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause **Error! Reference source not found.**13.1(a) to clause **Error! Reference source not found.** 13.1(d), then, without limiting any other right or remedy SSC may have:
- (a) the Customer's right to resell Equipment or use it in the ordinary course of its business ceases immediately; and
 - (b) SSC may at any time:
 - (i) require the Customer to deliver up all Equipment in its possession which has not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover them.

7. SUPPLY OF SERVICES

- 7.1 SSC shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 SSC shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 SSC shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and SSC shall notify the Customer in any such event.

7.4 SSC warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Equipment Specification are complete and accurate;
- (b) co-operate with SSC in all matters relating to the Services;
- (c) provide SSC, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by SSC to provide the Services;
- (d) provide SSC with such information and materials as SSC may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) where required, prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- (g) keep and maintain all materials, equipment, documents and other property of SSC (**SSC Materials**) at the Customer's premises in safe custody at its own risk, maintain SSC Materials in good condition until returned to SSC, and not dispose of or use SSC Materials other than in accordance with SSC's written instructions or authorisation.

8.2 If SSC's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) SSC shall without limiting its other rights or remedies have the right to suspend performance of the 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 to the extent the Customer Default prevents or delays SSC's performance of any of its obligations;
- (b) SSC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from SSC's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse SSC on written demand for any costs or losses sustained or incurred by SSC arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

9.1 The price for Equipment and/or Services shall be the price set out in the Order or, if no price is quoted, the price set out in SSC's published price list as at the date of delivery. The price of the Equipment is exclusive of all costs and charges of packaging, insurance, transport of the Equipment, which shall be paid by the Customer when it pays for the Equipment.

9.2 SSC reserves the right to increase the price of the Equipment and/or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment and/or Services to SSC that is due to:

- (a) any factor beyond the control of SSC (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Equipment and/or Services ordered, or the Equipment Specification and/or Services Specification; or
- (c) any delay caused by any instructions of the Customer in respect of the Equipment and/or Services or failure of the Customer to give SSC adequate or accurate information or instructions in respect of the Equipment and/or Services.

9.3

9.4 SSC shall invoice the Customer for the Equipment and/or Services in accordance with the Order or, if no such information is included in the Order, at any time following acceptance of the Order.

9.5 The Customer shall pay each invoice submitted by SSC:

- (a) within [30] days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by SSC, and

time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by SSC to the Customer, the Customer shall, on receipt of a valid VAT invoice from SSC, pay to SSC such additional amounts in respect of VAT as are chargeable on the supply of the Services or Equipment at the same time as payment is due for the supply of the Services or Equipment.

9.7 If the Customer fails to make any payment due to SSC under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. SSC may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by SSC to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by SSC.

10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on SSC obtaining a written licence from the relevant licensor on such terms as will entitle SSC to license such rights to the Customer.

10.3 All SSC Materials are the exclusive property of SSC.

11. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the

Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

12. : THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 Nothing in these Conditions shall limit or exclude SSC's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) any matter that may not be limited or excluded by law.

12.2 Subject to clause 12.1:

- (a) SSC shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
- (b) SSC's total liability to the Customer in respect of property damage arising under the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £2,000,000 or if higher the amount recoverable under any relevant insurance policy; and
- (c) SSC's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the charges actually paid by the Customer to SSC under the Contract at the time of such liability arising.

12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies, SSC may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- (b) the Customer fails to pay any amount under an invoice when such amount becomes due;
- (c) the Customer (being a Company) an order is made or a resolution is passed for the winding up of the Customer, or an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or such an administrator is appointed, or a receiver is appointed of any of the Customer's assets or undertaking, or circumstances arise which entitle a court or a creditor to appoint a receiver or manager or which entitle a court to make a winding-up order, or the Customer takes or suffers any similar or analogous action in consequence of debt, or an arrangement or composition is made by the Customer with its creditors or an application to a court for protection from its creditors is made by the Customer; or
- (d) the Customer (being an individual) is the subject of a bankruptcy petition or order; or the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies, SSC may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.3 Without limiting its other rights or remedies, SSC may suspend the supply of Services or all further deliveries of Equipment under the Contract or any other contract between the Customer and SSC if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(d), or SSC reasonably believes that the Customer is about to become subject to any of them.

13.4 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to SSC all of SSC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, SSC shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of SSC Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then SSC may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. FORCE MAJEURE

14.1 SSC shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract due to an event outside of its reasonable control (a "Force Majeure Event")

14.2 If the Force Majeure Event prevents SSC from providing any of the Services and/or Equipment for more than four weeks, SSC shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15. GENERAL

15.1 **Assignment and other dealings.**

- (a) SSC may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of SSC, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or fax.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax one Business Day after transmission.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action
- 15.3 **Severance.** 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.
- 15.4 **Waiver.** If a party does not take action under the Contract, then that shall not prevent a party from taking action later on.
- 15.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by SSC.
- 15.8 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 15.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).