

Terms and Conditions for the Supply of Services dated 1st June 2018

1. Definitions and Interpretation

1.1 In these Conditions, the following words have the following meanings:

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| Annual On-Call Charge | the annual charge for the On-Call Services set out in the Quotation to which the Order relates; |
| Bender UK | Bender UK Limited (a company registered in England and Wales with company number 03294339 and having its registered office at J L Winder and Co, 125 Ramsden Square, Barrow in Furness, Cumbria, LA14 1XA); |
| Bender UK Engineer | an employee, agent, consultant or subcontractor of Bender UK; |
| Business Day | a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business; |
| Commencement Date | the date set out for commencement of the Services in Bender UK's acknowledgement of Order or, where no date is specified, the date the Contract comes into existence in accordance with clause 2.3; |
| Conditions | the terms and conditions set out in this document together with any special terms agreed in writing between the Customer and Bender UK; |
| Contract | the contract between Bender UK and the Customer for the supply of the Services in accordance with these Conditions; |
| DP Legislation | (i) the General Data Protection Regulation ((EU) 2016/679) ("GDPR") unless and until the GDPR is no longer directly applicable in the UK, together with any national implementing laws (including the Data Protection Act 2018) regulations and secondary legislation as amended or updated from time to time in the UK; and (iii) any successor legislation to the GDPR and the Data Protection Act 2018. |
| Equipment | the equipment listed in the Equipment Schedule attached to the Quotation to which the relevant Order refers as such list may be amended from time to time in accordance with clause 3.6 but excluding all picture archiving and communication system ("PACS"), PC's, Touch Screens, all magnetic transformers and chokes, replacement batteries and the associated labour, capacitors, panels and chassis. |

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- 1.2.4 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.5 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.6 any words following the terms "including", "include", "for example" or any similar expression are by way of illustration and emphasis only and shall not limit the generality or extent of any other words or expressions;
- 1.2.7 where any period of time dates from a given day or the day of an act or event, such period is to be calculated exclusive of that day; and
- 1.2.8 a reference to writing or written includes faxes and e-mails.

2. Basis of Contract

- 2.1 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.
- 2.2 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions. The Customer must ensure that the terms of the Order submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Bender UK issues a written acceptance of the Order, at which point and on which date the Contract shall come into existence.
- 2.4 Subject to the provisions for earlier termination set out in these Conditions, the Contract shall continue from the Commencement Date for the period specified in the Quotation to which the Contract relates (or where no period is specified, for a period of 12 Months from the Commencement Date).
- 2.5 A Quotation shall not constitute an offer. A Quotation shall only be valid for a period of 60 days from its date of issue.
- 2.6 Any samples, drawings, descriptive matter, or advertising produced by Bender UK and any descriptions or illustrations contained in Bender UK's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

3. Services

- 3.1 Bender UK shall supply the Services to the Customer in accordance with the Specification in all material respects.

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- 3.2 Bender UK will send a Bender UK Engineer to the Site to perform the Maintenance Services at the intervals set out in the Specification and at a date and time agreed between Bender UK and the Customer.
- 3.3 Bender UK shall use all reasonable endeavours to meet any performance dates and times specified in the Specification, the Quotation or agreed between the parties, but any such dates and times shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.4 Bender UK 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 Bender UK shall notify the Customer in any such event.
- 3.5 Bender UK warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.6 If, during the term of the Contract, the Customer wishes to obtain Services in respect of equipment in addition to the Equipment, it may notify Bender UK in writing. Bender UK may submit a quotation to the Customer for adding such equipment to the Equipment. If the Customer accepts such quotation Bender UK may issue a written acceptance at which point and on which date such equipment shall be deemed to be Equipment for the purposes of the Contract and the Maintenance Charges and On-Call Charges shall be deemed to be increased by the amount specified by Bender UK in the quotation.
- 3.7 Bender UK is committed to maintaining a supply of spare parts to meet the needs of its Customers, however immediate availability of parts may be limited by the age and nature of the Equipment and Bender UK shall not be in breach of any of its obligations under the Contract where any failure or delay arises from failure to obtain, or delay in obtaining, spare parts.

4. Customer's Obligations

4.1 The Customer shall:

- 4.1.1 co-operate with Bender UK in all matters relating to the Services;
- 4.1.2 provide Bender UK with such information and materials as Bender UK may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- 4.1.3 notify Bender UK immediately in the event of a fault or breakdown of Equipment and shall follow call out procedure Bdoc317 as set out in Bender UK's procedure documentation issued to the Customer on or after Bender UK's acknowledgement of Order;
- 4.1.4 give Bender UK at least 72 hours' notice if the Customer requires any variation or suspension of any scheduled work or visit to the Site by Bender UK (and shall pay a fee in respect of any cancellations or variations notified less than 72 hours prior to such scheduled visit, being an amount equal to

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- half a day of labour, or where 24 hours or less notice is given, an amount equal to half a day of labour);
- 4.1.5 provide the Bender UK Engineer with access to the Site (including giving him any required Site induction, showing him where the Equipment is located and/or giving him all relevant keys, permits and access to allow him into the area in which the Equipment is situated) and other facilities as reasonably required by Bender UK to enable Bender UK to provide the Services without delay;
- 4.1.6 ensure that a representative of the Customer is in attendance at all times whilst a Bender UK Engineer is carrying out Services at the Site;
- 4.1.7 inform Bender UK of any security clearance which the Bender UK Engineer may require to visit the Site (such information to be provided in adequate time to complete such security clearance prior to such visit);
- 4.1.8 in respect of On-Call Services, promptly after any request for a visit to Site by a Bender UK Engineer (and prior to arrival of such Bender UK Engineer), provide written confirmation of such request and confirmation that On-Call Charges in respect of such visit will be paid; and provide to Bender UK in respect of every Site visit requested under the On-Call Services, a purchase order number in respect of the On-Call Charges for such visit, no later than the date 2 (two) Business Days after such visit.
- 4.2 If Bender UK's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 4.2.1 Bender UK 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 Bender UK's performance of any of its obligations;
- 4.2.2 Bender UK shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Bender UK's failure or delay to perform any of its obligations; and
- 4.2.3 the Customer shall reimburse Bender UK on written demand for any costs or losses sustained or incurred by Bender UK arising directly or indirectly from the Customer Default.

5. Charges and Payment

- 5.1 The Customer shall pay Bender UK the Maintenance Charges and the On-Call Charges for the Services.
- 5.2 The Maintenance Charges include the cost of labour required in the Maintenance Services. If during such Maintenance Services any fault is discovered UK Bender will

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- notify the Customer and provide a quotation for the parts and labour required to rectify such fault.
- 5.3 The On-Call Services shall be charged on a time and materials basis and labour will be calculated in accordance with the On-Call Rates.
- 5.4 The Customer acknowledges that where the Equipment includes Uninterruptable Power Systems, the battery bank is covered by a one year manufacturer's warranty from the date of delivery. Cost of replacement cells outside this warranty will be borne by the Customer and are not included in the Contract.
- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from Bender UK, pay to Bender UK such additional amounts in respect of VAT as are chargeable on the supply of the Services.
- 5.6 Bender UK may invoice the Customer for the Maintenance Charges and Annual On-Call Charge on (or at any time after one Month prior to) the Commencement Date (unless otherwise agreed in the Quotation or acknowledgement of Order).
- 5.7 Bender UK may invoice the Customer for On-Call Charges in respect of the Services provided on the date (or at any time after) such Services are provided.
- 5.8 The Customer shall pay each invoice issued to it by Bender UK in full and in cleared funds within 30 days from the end of the Month in which such invoice was issued. Payment shall be made to the bank account nominated in writing by Bender UK. Time of payment is of the essence.
- 5.9 If the Customer fails to make any payment due to Bender UK under the Contract by the due date for payment (due date), then:
- 5.9.1 the Customer shall pay interest on the overdue amount at the rate set in the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
- 5.9.2 Bender UK may notify the Customer that if it does not pay Bender UK will suspend its provision of the Services, and if payment is not made within 30 days of such notice, Bender UK may suspend provision of the Services until payment is made in full.
- 5.10 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Bender UK in order to justify withholding payment of any such amount in whole or in part. Bender UK may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Bender UK to the Customer.

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6. Exclusions

- 6.1 The Customer accepts and agrees that the Services do not include work arising in respect of loss or damage to the Equipment caused by:
- 6.1.1 misuse, neglect, wilful damage or operating outside the specified limits as set out in the operation and maintenance manuals;
 - 6.1.2 external factors, such as fire, lightning, water, flooding, explosion, earthquake, aircraft or articles dropped from them or water from a sprinkler system;
 - 6.1.3 failure of the room ventilation set;
 - 6.1.4 failure to report a known fault or malfunction;
 - 6.1.5 unauthorised repair or adjustments
 - 6.1.6 scaffolding, builders work or heavy lifting equipment; or
 - 6.1.7 the fitting of spares not supplied by or on behalf of Bender UK.
- 6.2 The Customer accepts and agrees that the Services do not include work arising in respect of maintenance, repair or fault clearance after incidents:
- 6.2.1 that could have been rectified by scheduled maintenance, on or around the due date, which could have been prevented if the maintenance had been undertaken, but was delayed by others; or
 - 6.2.2 caused as a result of failure to act upon recommended pre-emptive works.
- 6.3 If the Customer requests that Bender UK carries out any work in the circumstances set out in clauses 6.1 or 6.2 or if any work is requested by the Customer to modify the Equipment, such work will be carried out only after written acceptance of Bender UK's cost estimation and it will be invoiced separately after the relevant work is complete (such invoice to be paid in accordance with these Conditions).

7. Limitation of liability

- 7.1 Nothing in these Conditions shall limit or exclude Bender UK's liability for:
- 7.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 7.1.2 fraud or fraudulent misrepresentation;
 - 7.1.3 breach of the terms implied by section 2 of the Sale and Supply of Goods and Services Act 1982; or
 - 7.1.4 any matter in respect of which it would be unlawful for Bender UK to exclude or restrict liability.

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- 7.2 Subject to clause 7.1 Bender UK shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for any loss of profit, or any indirect or consequential loss (including at all times, without limitation, economic loss, loss of business, depletion of goodwill or similar).
- 7.3 Subject to clause 7.1, Bender UK's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise arising under or in connection with the performance or contemplated performance of the Contract shall, in respect of all claims (connected or unconnected) in any 12 Month period in all circumstances be limited to £5,000,000 (five million pounds).
- 7.4 Bender UK hereby excludes to the fullest extent permitted in law, all conditions and warranties, whether express (other than as set out in these Conditions) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 7.5 Any switching or functional testing of Equipment carried out as part of the Services whilst supporting load carries some degree of risk to continuity of supply. The Bender UK Engineers will take every precaution to prevent loss of power to the connected loads, but continuity of supply cannot be guaranteed. Bender UK is unable to accept responsibility or liability for any problems, loss or damage which may occur due to inadvertent interruption of the supply to the connected or other loads while the Services are carried out. If this small risk of supply loss is unacceptable, the Customer should request that the Services be rescheduled for a time when the loads or applications can be safely shut down.
- 7.6 The Customer acknowledges that the above provisions of this clause 7 are reasonable and reflected in the price which would be higher without those provisions, and the Customer will accept such risk accordingly.
- 7.7 This clause 7 shall survive termination of the Contact.

8. Termination

- 8.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 3 (three) Months' written notice.
- 8.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 8.2.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within a period of 10 (ten) Business Days after receipt of notice in writing requiring it to do so; or
- 8.2.2 the other party summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, has a receiver, manager or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding-

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- up (save for the purpose of a voluntary reconstruction or amalgamation previously approved in writing by the party serving notice), is subject to a petition presented to any Court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation previously approved in writing by the party serving notice), has a provisional liquidator appointed, has a proposal made for a scheme of arrangement under Part 26 (arrangements and reconstructions) Companies Act 2006, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person or is the subject of a notice to strike off the register at Companies House; or
- 8.2.3 the other party becomes bankrupt, insolvent, makes any composition with his creditors, has a receiver appointed under the Mental Health Act 1893 or dies; or
- 8.2.4 the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- 8.2.5 the equivalent of any of the above occurs to the other party under the jurisdiction to which the other party is subject.
- 8.3 Without limiting its other rights or remedies, Bender UK may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 8.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 120 days after the due date for payment; or
- 8.3.2 there is a change of Control of the Customer ("Control" having the meaning set out in section 1124 of the Corporation Tax Act 2010).
- 8.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 8.5 On expiry or termination of the Contract for any reason the Customer shall immediately pay to Bender UK all of Bender UK's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Bender UK shall submit an invoice, which shall be payable by the Customer immediately on receipt.

9. Force majeure

- 9.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, extremes of weather, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international

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calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

10. Variation and Waiver

- 10.1 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Bender UK.
- 10.2 No failure to exercise or delay in exercising any right or remedy provided under the Contract or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.
- 10.3 No single or partial exercise of any right or remedy under the Contract shall prevent or restrict the further exercise of that or any other right or remedy.

11. Notices

- 11.1 Any notices given under clauses 8 (Termination) or 11 (Notice) must be in writing and may be delivered by hand, first class post, Special Delivery post, fax or email, addressed to the recipient at its registered office or to any other address, fax number or email address as notified in writing to the sender by the other party.

12. Entire Agreement

- 12.1 The Contract constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract. Each party acknowledges that it has not relied upon any warranty, representation, statement or understanding other than those expressly set out in the Contract.
- 12.2 Nothing in this clause shall limit or exclude any liability for fraudulent misrepresentation.

13. Rights of Third Parties

- 13.1 No term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Contract.

14. Assignment

- 14.1 Bender UK may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate any or all of its obligations under the Contract to any third party or agent.

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14.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Bender UK.

15. Severance

15.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected and the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16. Arbitration

16.1 Any dispute, controversy or claim arising out of or relating to the Contract, including any question regarding its breach, existence, validity or termination or the legal relationship established by the Contract may be finally resolved by arbitration and the parties agree that upon either party giving written notice to the other of such dispute such matter shall be referred to a mutually agreed upon arbitrator or if the parties have not agreed upon an arbitrator within 30 days of the date of the written notice, to the president, or some person appointed by the president, of the Institute of Electrical Engineers;

17. Governing Law and Jurisdiction

17.1 The Contract, 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, English law, and, subject to clause 16, the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.