

**1. DEFINITIONS**

- 1.1 **Northpower, we, us or our** means Northpower Limited and all its subsidiaries, affiliates and each of their respective directors, officers, partners, employees and agents.
- 1.2 **Customer, you or yours** means Northpower's customer as defined in the Order.
- 1.3 **Materials** means, any goods or equipment owned by us and/or supplied by us under this Agreement including, but not limited to, electrical equipment or any other goods or equipment related to electrical equipment or installation or maintenance of such equipment and as otherwise set out in the Key Terms.

**2. FORMATION OF AGREEMENT**

- 2.1 These Terms of Trade and your acceptance of a quotation from Northpower, including and incorporating the Key Terms and Acceptance Form (**Offer**) form a binding legal agreement between you and Northpower and constitute an order for Northpower to supply Materials and/or services on the terms set out in our Offer (the **Agreement**).
- 2.2 You will be deemed to have accepted our Offer and these Terms of Trade upon the earlier of:
- countersigning the Offer documentation or these Terms of Trade where indicated and returning the signed documentation to us; or
  - communication of your acceptance, (whether orally, in writing, by purchase order, by email or other action consistent with acceptance, subject always to clause 2.4 below) and provision of credit arrangements satisfactory to us.
- 2.3 Unless otherwise stated by us, an Offer remains open for acceptance for 30 days after the date of issue (or, if undated, the date of receipt by you), after which time Northpower will not be bound by any quoted price(s). If, within 60 days of your acceptance of our Offer pursuant to clause 2.2 (and the formation of an Agreement between you and Northpower):
- we remain unable to commence the provision of the agreed Materials and/or services for whatever reason;
  - you are unable to provide us with necessary access to any relevant sites and/or materials; or
  - the relevant licences, permits or consents have not been granted; then we may, at our sole discretion, elect either to terminate this Agreement or to treat the situation as a Variation, which shall be agreed by the parties in accordance with clause 3.3.
- 2.4 This Agreement supersedes all previous communications in relation to the relevant Materials and/or services (whether written or oral), including without limitation any inconsistent terms (a) purported to be included in your acceptance pursuant to clause 2.2 above; (b) in any order from you (including without limitation in any purchase order); and (c) that might be implied by law, trade custom, practice or course of dealing.

**3. SCOPE OF WORK**

- We will provide the Materials and/or services described in the Offer in accordance with industry standards and all relevant legal requirements.
- 3.1 We will be entitled to vary the scope of work under this Agreement, which shall include, without limitation, any changes to the price, quality, scale, supply or timing of the work arising from:
- any verbal or written instruction from you or your representative;
  - any deficiency or inaccuracy in the information supplied by you on which we have relied in preparing the Offer;
  - any changes in law (including without limitation any statute, regulation, by-law or requirement of any relevant authority) or circumstance not reasonably foreseeable at the time of entering into this Agreement;
  - any circumstances that prevent us from providing any Materials or services pursuant to clause 2.3; or
  - any other reason agreed to in writing by the parties (**Variation**).
- 3.2 Where practicable, the parties shall agree in writing the value of any Variation, which shall be based on our standard rates at the time, and its impact on any previously agreed dates relating to the provision of the Materials and/or services. You agree that where the Variation is minor we do not need to obtain your agreement to the Variation. Where agreement is required but the parties are unable to reach agreement, then either party may terminate the Agreement with immediate effect and you shall be required to immediately pay all sums due in relation to the provision of Materials and services up until the date of termination.
- 3.3 If you cancel or terminate this Agreement at any time you agree to pay us any costs that we have incurred in the provision of Materials and services under this Agreement, provided that we will mitigate these costs where we can.

**4. PRICE AND PAYMENT**

- 4.1 You agree to the price, plus GST (unless otherwise specified), detailed in the Offer.
- 4.2 Subject to any agreed credit arrangements, all Materials and services provided by Northpower must be paid for before they are provided to you.
- 4.3 If we have agreed to credit arrangements, you will pay the invoiced amounts no later than the 20<sup>th</sup> of the month following the date of the invoice

(or any other date for payment agreed in writing by the parties) (the **Due Date**).

- 4.4 If you do not pay any sums due by the Due Date then you will be required to pay:
- interest on all overdue amounts, which will be charged at the rate of 2.0% per month compounding, from the Due Date to the date of payment; and
  - all costs and expenses (including, without limitation, legal fees on a solicitor client basis, court costs, reasonable costs of administrative time spent attending to any debt collection and debt collection agency costs) reasonably incurred by Northpower in the collection of overdue accounts and interest.
- 4.5 If you dispute any obligation to pay under any invoice in good faith, you must notify us of the nature of the dispute and the date and number of the invoice within 14 days of receipt of the invoice. If you fail to notify us in that manner, you will be required to pay for the Materials or services on the relevant Due Date. Payment of any undisputed amounts will be required by the Due Date.
- 4.6 Receipt of any electronic payment, cheque or other negotiable instrument shall not be deemed to be payment if dishonoured, cancelled or invalidated.
- 4.7 Part payment of any sums owed to us will not constitute full and final settlement of your total debts unless we have previously agreed in writing to accept the amount paid as full and final settlement of such debts.
- 4.8 If you fail to pay us any amount due by the Due Date, or in the event of any adverse change in your financial circumstances, we may, on notice to you, terminate or suspend the grant of credit to you, or vary the terms upon which we grant credit. If so, you must pay any outstanding debt immediately and pay in advance for any existing order.

**5. DEFAULT**

- 5.1 You shall be in default under this Agreement (**Default**) if:
- subject to clause 4.5, you do not pay any invoice by the Due Date and fail to remedy this breach within 10 business days of receiving notice from us advising that the payment is overdue;
  - you knowingly cause or allow any Materials to be, or become liable to be, removed, destroyed, damaged, endangered, disassembled, concealed from us or made subject to any lien;
  - you sell or otherwise dispose of any Materials, or if any Materials become liable to seizure by another creditor; or
  - you breach any of your other obligations under this Agreement and fail to remedy such breach within 10 business days of us requesting you to do so.
- 5.2 In the event of any Default, and without prejudice to any other available rights and remedies, Northpower may:
- suspend or cease all work agreed to under this Agreement;
  - terminate the Agreement;
  - seize any Materials that are subject to any Northpower security interest(s);
  - enter without notice any premises in order to seize any Materials. You irrevocably authorise Northpower's agents to enter the premises on which the Materials may be located in order to seize the Materials;
  - if necessary, use your equipment to lift and transport the Materials. You indemnify Northpower against any claim from any third party for damage caused during such entry or seizure and you agree that you have no claim whatsoever against Northpower for any such damage;
  - require payment by you for all completed work and non-returnable Materials received by you; and
  - require payment by you of any reasonable costs incurred by Northpower in association with any of (a) – (f) above.

**6. SET OFF**

- 6.1 You will pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 6.2 Northpower may at any time, at our absolute discretion and without prior notice, set off any amount owing by you to us (whether or not due for payment) against any amount payable by us to you (including without limitation all or any part of any credit balance held by us), regardless of whether or not either liability arises under this Agreement. Any exercise by us of such rights of set off shall not limit or affect any other rights or remedies available to us under this Agreement or otherwise.

**7. OWNERSHIP & SECURITY**

- 7.1 Northpower retains ownership of all Materials supplied to you until we receive your payment in full for those Materials.
- 7.2 The terms "perfected", "proceeds", "purchase money security interest" and "security interest" have the respective meanings given to them in the Personal Property Securities Act 1999 (**PPSA**).

- 7.3 You grant a security interest to us in each and every part of any Materials supplied to you as security for payment by you for the Materials and for any other amounts owed by you to us from time to time. The security created under and by this Agreement will become enforceable in the event of any Default occurring pursuant to clause 5.1.
- 7.4 You acknowledge that a financing statement may be registered in respect of the security interest granted in the Materials and that you will do all things that we require in order to enable us to: (a) have a perfected security interest in the Materials and a purchase money security interest in each part of the Materials; and (b) exercise any of our rights or powers under this Agreement, whether on enforcement of the security interest or otherwise.
- 7.5 You agree to waive the right to receive a copy of a verification statement under the PPSA.
- 7.6 You agree that (a) your rights as a debtor under sections 116, 120(2), 121, 125, 127, 129 and 131 of the PPSA will not apply to this Agreement; and (b) nothing in sections 114(1)(a), 120(1), 133 and 134 of the PPSA will apply to this Agreement or the security interest granted under this Agreement.
- 7.7 If you do not pay any sums due by the Due Date then, in addition to the payment of interest and any debt collection costs detailed in clause 4.4, you will be required to pay the costs of: (a) our compliance with section 162 of the PPSA; and (b) obtaining any order maintaining registration under section 165 of the PPSA.
- 7.8 Northpower is the sole owner of any intellectual property rights that arise or are created by our employees or contractors in relation to this Agreement.
- 8. RISK**
- 8.1 Notwithstanding our ownership of any Materials, the risk of damage to or loss of those Materials will fall on you from the time of delivery to your site. You will insure any such Materials for full replacement value from the time of delivery.
- 9. DEFECTS**
- 9.1 If you become aware of any defect in any Materials or services supplied by Northpower, you must advise us in writing as soon as you become aware of such defect.
- 9.2 We will remedy, at our cost, any defects in our workmanship that arise within 12 months of the date the relevant services were performed. This obligation does not extend to any defects or damage caused by misuse or mismanagement of the works, damage caused by third parties or yourself, or any deficiency in design not undertaken by us. For the avoidance of doubt, we will have no liability after the expiry of that 12 month period.
- 9.3 We will pass on the benefit of any manufacturers' warranties relating to any Materials that we supply to you for a maximum period of 12 months from the date of delivery of those Materials.
- 10. YOUR OBLIGATIONS**
- 10.1 In addition to your other obligations detailed in this Agreement, you will:
- provide, free of cost and as soon as practicable, all information in your possession or control that we may require in order to carry out the works, ensuring that any such information does not infringe the copyright or other intellectual property rights of any other person or entity;
  - co-operate with Northpower at all times and not obstruct the proper performance of any services; and
  - as soon as practicable after the commencement of this Agreement, allow us to access the locations associated with the provision of the Materials and/or services.
- 11. INDEMNITY**
- 11.1 You indemnify Northpower against any loss, damage, claim, demand, liability, cost or expense that we suffer or incur in relation to any claim against Northpower by a third party (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), equity or otherwise) arising from any breach of your obligations under this Agreement, any deficiency in any specification or designs provided by you, your infringement of the intellectual property rights of any third party or your misuse of any Materials and services supplied by us.
- 11.2 This indemnity will survive termination or expiry of this Agreement.
- 12. LIMITATION OF LIABILITY**
- 12.1 Subject to clause 12.5, Northpower will not in any circumstances whatsoever be liable to you (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), equity or otherwise) for any loss of profit, revenue, contract(s) or anticipated savings; loss of use, production or loss arising from any production stoppage; costs of arranging alternative energy supply; loss or corruption of data; loss of goodwill; or any indirect, special, consequential or pure economic loss that is suffered by you, your related companies or by any third party arising under or in connection with this Agreement.
- 12.2 Subject to clauses 12.1 and 12.5, our total liability to you arising under or in connection with this Agreement (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), equity or otherwise) shall be limited to, at our discretion, either:
- subject to clause 12.3, direct loss or damage to you caused by Northpower up to an amount not exceeding the total amounts paid by you under this Agreement; or
  - the reasonable cost of repairing or replacing defective Materials and/or re-performing defective services provided under this Agreement.
- 12.3 If any loss or damage is caused by Northpower and another party, we will only be liable for our proportionate share of the costs of replacement, repair or re-performance of the services.
- 12.4 Northpower will have no liability in respect of any claim for loss or damage arising out of this Agreement that is notified to us three or more years after the date on which the relevant services were provided.
- 12.5 Nothing in this Agreement shall limit or exclude our liability for fraud or fraudulent misrepresentation or for death or personal injury caused by our negligence.
- 12.6 The limitations and exclusions of liability in this Agreement will survive termination or expiry of this Agreement.
- 13. HEALTH AND SAFETY**
- 13.1 We will provide our services in accordance with all relevant health, safety and environmental requirements and with any site-specific safety requirements that you notified to us at the time you ordered our Materials and/or services.
- 13.2 You must inform us of any workplace hazards to which we may be exposed while on your premises at the time of ordering our Materials and/or services.
- 13.3 We may refuse to perform work if we are not satisfied that it can be performed safely.
- 14. CONFIDENTIALITY**
- 14.1 You shall not, at any time during this Agreement and for a period of two years following completion of the services, disclose to any person any confidential information concerning Northpower's business, affairs, pricing, customers, clients or suppliers except as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15. FORCE MAJEURE**
- 15.1 We shall not in any event be liable to you as a result of any delay or failure to perform our obligations under this Agreement as a result of any strikes, lock-outs or other industrial disputes; failure of a utility service or transport network; war, riot, civil commotion or malicious damage; compliance with any law or governmental order, rule, regulation or direction; accident, breakdown of plant or machinery, fire, flood, storm or other acts of God; default of suppliers or subcontractors or any other cause beyond our reasonable control.
- 16. CONSUMER GUARANTEES ACT**
- 16.1 Where you acquire, or hold yourself out as acquiring, Materials or services or both for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 will not apply to the supply of Materials or services under this Agreement.
- 16.2 The limitation of liability in clause 12 of this Agreement is not intended to limit any rights a consumer may have under the Consumer Guarantees Act 1993.
- 17. NO ASSIGNMENT**
- 17.1 You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any manner with any or all of your rights under this Agreement.
- 18. VARIATIONS AND WAIVERS**
- 18.1 Subject to clause 3.3, no variation to or waiver of any part of this Agreement shall be valid or effective unless or until agreed to in writing by Northpower.
- 19. RELATIONSHIP**
- 19.1 Nothing expressed or implied in this Agreement will constitute either party as the agent, partner, employee or officer of, or as a joint venture with, the other party. Neither party will make any contrary representation to any other person nor will they have any authority to act as agent for, or to bind, the other party in any way.
- 19.2 A person who is not a party to this Agreement shall not have any rights to enforce its terms.
- 20. SEVERABILITY**
- 20.1 If any condition or provision of this Agreement is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceable shall not affect the validity or enforceability of any other provisions and conditions of this Agreement.