The *conditions* of *contract* are the NEC4 Engineering and Construction Short Contract June 2017 (with amendments October 2020) and the following additional conditions.

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| The Parties agree that the following DEFCONs and narrative conditions shall apply to this contract:   * DEFCON 76: Contractor’s Personnel at Government Establishments * DEFCON 501: Definitions and Interpretations. This DEFCON is only in relation to definitions and interpretations of language in the included DEFCONs, not NEC terms. * DEFCON 503: Formal Amendments to Contract * DEFCON 513: Value Added Tax and Other Taxes * DEFCON 514: Material Breach * DEFCON 515: Bankruptcy and Insolvency * DEFCON 516: Equality * DEFCON 518: Transfer * DEFCON 520: Corrupt Gifts and Payments of Commission * DEFCON 522: Payment and Recovery of Sums Due * DEFCON 526: Notices * DEFCON 527: Waiver * DEFCON 528: Import and Export Licenses * DEFCON 530: Dispute Resolution (English Law) * DEFCON 531: Disclosure of Information * DEFCON 532A: Protection of Personal Data (Where Personal Data is not Being Processed on Behalf of the Authority) * DEFCON 534: Subcontracting and Prompt Payment * DEFCON 537: Rights of Third Parties * DEFCON 538: Severability * DEFCON 539: Transparency * DEFCON 540: Conflicts of Interest * DEFCON 550: Child Labour and Employment Law * DEFCON 566: Change of Control of Contractor * DEFCON 602B: Quality Assurance (Without Quality Plan) * DEFCON 609: Contractor’s Records * DEFCON 620: Contract Change Control Procedure * DEFCON 632: Third Party Intellectual Property – Rights and Restrictions * DEFCON 642: Progress Meetings * DEFCON 646: Law and Jurisdiction (Foreign Suppliers) * DEFCON 656A: Termination for Convenience – Under £5m * DEFCON 658: Cyber. Further to DEFCON 658 the Cyber Risk Profile of the Contract is Very Low, as defined in Def Stan 05-138. * DEFCON 660: Official-Sensitive Security Requirements * DEFCON 671: Plastic Packaging Tax * DEFCON 691: Timber and Wood-Derived Products  |  | | --- | | **Limitations on Liability**   1. Definitions    1. In this Condition the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:   “Charges” means any of the charges for the provision of the Services, Contractor Deliverables and the performance of any of the Contractor’s other obligations under this Contract, as determined in accordance with this Contract;  “Data Protection Legislation” means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:   1. UK GDPR; 2. DPA 2018; and   (3) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended, each to the extent that it relates to the processing of personal data and privacy;  “Default” means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered a Default;  ‘DPA 2018’ means the Data Protection Act 2018;  “Law” means any applicable law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;  “Term” means the period commencing on the date on which this Contract is signed and ending on completion of the Contract or on earlier termination of this Contract.  ‘UK GDPR’ means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;   1. Unlimited liabilities    1. Neither Party limits its liability for:       1. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);       2. fraud or fraudulent misrepresentation by it or its employees;       3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or      * + 1. any liability to the extent it cannot be limited or excluded by law.  1. The financial caps on liability set out in Clauses 4 and 5 belowshall now apply to the following:    1. breach by the Contractor of DEFCON 532A; and    2. Data Protection Legislation; and to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty. 2. Financial limits   Subject to Clauses 2 and 3 and to the maximum extent permitted by Law:   * 1. [throughout the Term] the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:      1. in respect of DEFCON 76, £1,200,000 in aggregate;      2. in respect of DEFCON 514, £1,000,000 in aggregate; and   2. without limiting Clause 4.1 and subject always to Clauses 2, 3, and 4.3, the Contractor’s total liability throughout the Term in respect of all other liabilities, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £1,000,000 in the aggregate;   3. on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor’s total liability (in aggregate) set out in Clauses 4.1 and 4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 4.1 and 4.2 of this Contract.  1. Subject to Clauses 2, 3, and 6, and to the maximum extent permitted by Law the Authority’s total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year. 2. Clause 5 shall not exclude or limit the Contractor’s right under this Contract to claim for the Charges. 3. Consequential loss   Subject to Clauses 2, 3 and 8, neither party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:   * 1. indirect loss or damage;   2. special loss or damage;   3. consequential loss or damage;   4. loss of profits (whether direct or indirect);   5. loss of turnover (whether direct or indirect);   6. loss of business opportunities (whether direct or indirect); or   7. damage to goodwill (whether direct or indirect),   even if that Party was aware of the possibility of such loss or damage to the other Party.   1. The provisions of Clause 7 shall not restrict the Authority’s ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:    1. any additional operational and administrative costs and expenses arising from the Contractor’s Default, including any costs paid or payable by the Any:       1. to any third party;       2. for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and       3. relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;    2. any or all wasted expenditure and losses incurred by the Authority arising from the Contractor’s Default, including wasted management time;    3. the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants’ feed, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);    4. any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;    5. damage to the Authority's physical property and tangible assets, including damage under DEFCON 76;    6. costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;    7. any additional costs incurred by the Authority in relation to the Authority’s contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);    8. any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or    9. any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract. 2. Invalidity   If any limitation or provision contained or expressly referred to in this Condition is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition.   1. Third party claims or losses   Without prejudice to any other rights or remedies the Authority may have under this Contract, the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:   * 1. arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and   2. is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.  1. No double recovery   Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor. |   If there is any inconsistency between the provisions of this contract and any DEFCONs or the narrative condition(s) incorporated or referred to herein, then the DEFCON shall take priority to the extent required to resolve the conflict.  For the purposes of interpreting the DEFCONs and the narrative condition(s), any references to the “Authority” shall mean the party defined in page 2 of this contract as the “Client”. |

All information around the specification is redacted due to security.

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