The *conditions* of *contract* are the NEC4 Engineering and Construction Contract Option A (as amended) and the following additional conditions.

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| ***Additional conditions of contract*** |  | **Z1** |  | **Limitations on Liability** | | | |
|  | Z1.1 |  | **Definitions**  In this Condition Z1 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 *Client* responsibility or an activity to be carried out by the *Client* 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 commencement date / the date on which this Contract is signed / the date on which this Contract takes effect] and ending [on the expiry of x years /on x date] 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; | | | |
|  |  | Z1.2 |  | **Unlimited liabilities**  Z1.2.1 Neither Party limits its liability for:  Z1.2.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);  Z1.2.1.2 fraud or fraudulent misrepresentation by it or its employees;  Z1.2.1.3 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  Z1.2.1.4 any liability to the extent it cannot be limited or excluded by law. | | | |
|  |  | Z1.3 |  | Z1.3.1 The financial caps on liability set out in Clauses Z1.4 and Z1.5 below shall not apply to the following:  Z1.3.1.1 breach by the Contractor of DEFCON 532A and Data Protection Legislation; and  Z1.3.1.2 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. | | | |
|  |  | Z1.4 |  | **Financial limits**  Subject to Clauses Z1.2 and Z1.3 and to the maximum extent permitted by Law:  Z1.4.1 [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:  Z1.4.1.1 in respect of DEFCON 76, £1,200,000 in aggregate;  Z1.4.1.2 in respect of DEFCON 514, £1,000,000 in aggregate; and  Z1.4.1.3 in respect of DEFCON 612, £1,000,000 in aggregate;  Z1.4.2 without limiting Clause Z1.4.1 and subject always to Clauses Z1.2, Z1.3 and Z1.4.3, 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;  Z1.4.3. 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 Z1.4.1 and Z1.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the *Client* shall be able to claim up to the full value of the limitation set out in Clauses Z1.4.1 and Z1.4.2 of this Contract. | | | |
|  |  | Z1.5 |  | Subject to Clauses Z1.2, Z1.3 and Z1.6, and to the maximum extent permitted by Law the *Client'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 *Client* in the relevant Contract Year in respect of any and all claims in that Contract Year. | | | |
|  |  | Z1.6 |  | Clause Z1.5 shall not exclude or limit the *Contractor's* right under this Contract to claim for the Charges. | | | |
|  |  | Z1.7 |  | **Consequential loss**  Subject to Clauses Z1.2, Z1.3 and Z1.8, 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:  Z1.7.1. indirect loss or damage;  Z1.7.2. special loss or damage;  Z1.7.3. consequential loss or damage;  Z1.7.4. loss of profits (whether direct or indirect);  Z1.7.5. loss of turnover (whether direct or indirect);  Z1.7.6. loss of business opportunities (whether direct or indirect); or  Z1.7.7. 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. | | | |
|  |  | Z1.8 |  | The provisions of Clause Z1.7 shall not restrict the *Client's* ability to recover any of the following losses incurred by the *Client* to the extent that they arise as a result of a Default by the *Contractor*:  Z1.8.1. any additional operational and administrative costs and expenses arising from the *Contractor's* Default, including any costs paid or payable by the *Client*:  Z1.8.1.1. to any third party;  Z1.8.1.2. for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the *Contractor* Deliverables; and  Z1.8.1.3. relating to time spent by or on behalf of the *Client* in dealing with the consequences of the Default;  Z1.8.2. any or all wasted expenditure and losses incurred by the *Client* arising from the *Contractor's* Default, including wasted management time;  Z1.8.3. 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' fees, 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);  Z1.8.4. any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of *Client* data, or other data or software, including, to the extent the *Client* data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such *Client* data, data or software;  Z1.8.5. damage to the *Client's* physical property and tangible assets, including damage under DEFCON 76;  Z1.8.6. 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;  Z1.8.7. any additional costs incurred by the *Client* in relation to the *Client's* contracts with a third party (including any compensation or interest paid to a third party by the *Client*) as a result of the Default (including the extension or replacement of such contracts);  Z1.8.8. any fine or penalty incurred by the *Client* pursuant to Law and any costs incurred by the *Client* in defending any proceedings which result in such fine or penalty; or  Z1.8.9. 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. | | | |
|  |  | Z1.9 |  | **Invalidity**  If any limitation or provision contained or expressly referred to in this Condition Z1 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 Z1. | | | |
|  |  | Z1.10 |  | **Third party claims or losses**  Without prejudice to any other rights or remedies the *Client* may have under this Contract, the *Client* 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 *Client* by a third party under any contract with that third party provided that such third party claim:  Z1.10.1. 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  Z1.10.2. 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 *Client* or the *Contractor*), such claim to be construed as direct losses for the purpose of this Contract. | | | |
|  |  | Z1.11 |  | **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 *Client* shall be entitled to use (singly or together) such rights and remedies available to the *Client* so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the *Client* may have against any guarantor. | | | |
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|  |  | **Z2** |  | **Electronic Payment** | | | |
|  |  | Z2.1 |  | Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under Clause 5 the *Contractor* will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool via the current supported CP&F gateway. | | | |
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|  |  | **Z3** |  | **Milestone Payments** | | | |
|  |  | Z3.1 |  | The *Client* shall make to the *Contractor* payments against the activities defined in the Activity Schedule. Payment will be certified by the ‘*Project Manager’* against each activity once completed without defect. | | | |
|  |  | **Z4** |  | **Key Performance Indicators (KPIs)** | | | |
|  |  | Z4.1 |  | The *Contractor* shall monitor its performance (and the performance of any other person or party for whom it is responsible) in the delivery of the *works* in accordance with the provisions of the KPI Table and/or as set out elsewhere in the Works Information and shall provide the *Project Manager* with relevant particulars of any aspects of its or their performance which fail to meet the requirements or standards as specified therein or elsewhere in this Contract. | | | |
|  |  | Z4.2 |  | The *Client* may at all reasonable times observe, inspect and satisfy itself as to the adequacy of the *Contractor’s* monitoring of performance pursuant to the KPI Table and/or as set out elsewhere in the Works Information including carrying out any sample checks or other auditing the *Client* requires. | | | |
|  |  | Z4.3 |  | The *Client* shall have the right to take action as set out in the KPI Table. | | | |
|  |  |  |  | **KPI Table** | | | |
|  |  |  |  | **Header** | **Measure** | **Target** | **Action** |
|  |  |  |  | Payments | Number of payment milestones completed and signed off by TSP in line with the Accepted Programme | Good: 95% and above  Approaching Target: 91-94.9%  Requires Improvement: 87-90.9%  Inadequate: 86.9% and under | Good: contractual target  Approaching Target: performance just below contractual target but not a major cause for concern unless underperformance is sustained,  Requires Improvement: interventions required  Inadequate: major interventions or contractual rectification plans required |
|  |  |  |  | Payment of Subcontractors | Payment of subcontractors and suppliers within contractual timeframe (30 days). Contractor to provide evidence of payment of subcontractors | Good: 95% and above  Approaching Target: 91-94.9%  Requires Improvement: 87-90.9%  Inadequate: 86.9% and under | Good: contractual target  Approaching Target: performance just below contractual target but not a major cause for concern unless underperformance is sustained,  Requires Improvement: interventions required  Inadequate: major interventions or contractual rectification plans required |
|  |  |  |  | Planning and management | Inform Authority, TSP and Key Stakeholders of any upcoming works giving a minimum of 10 works days for any activity that requires site access/clearances, disruption to utilities, out of hours deliveries, disruption to KDF/CITSO operations. | Good: 95% and above  Approaching Target: 91-94.9%  Requires Improvement: 87-90.9%  Inadequate: 86.9% and under | Good: contractual target  Approaching Target: performance just below contractual target but not a major cause for concern unless underperformance is sustained,  Requires Improvement: interventions required  Inadequate: major interventions or contractual rectification plans required. |
|  |  |  |  | Safety | Work in a safe manner in accordance with local and UK legislation. Reporting on a regular basis (minimum monthly) number of working hours, number of people on site at any one time, near misses, any H&S incidents, H&S non compliances incl stopped works and number of tool box talks given. | Good: 95% and above  Approaching Target: 91-94.9%  Requires Improvement: 87-90.9%  Inadequate: 86.9% and under | Good: contractual target  Approaching Target: performance just below contractual target but not a major cause for concern unless underperformance is sustained,  Requires Improvement: interventions required.  Inadequate: major interventions or contractual rectification plans required. |
|  |  |  |  | Waste Management | Disposal in accordance with Waste Management Plan,  including quantities of waste being generated and achieving a minimum of 80% diversion from landfill.  Waste is to be classified in accordance with UK Gov requirements available here: <https://www.gov.uk/how-to-classify-different-types-of-waste#:~:text=You%20must%20identify%20and%20classify,organic%20pollutants%20'POPs>') | Good: 95% and above  Approaching Target: 91-94.9%  Requires Improvement: 87-90.9%  Inadequate: 86.9% and under | Good: contractual target  Approaching Target: performance just below contractual target but not a major cause for concern unless underperformance is sustained,  Requires Improvement: interventions required  Inadequate: major interventions or contractual rectification plans required |
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|  |  | **Z5** |  | **Applicable DEFCONs and DEFFORMS** | | | |
|  |  | Z5.1 |  | DEFCON 76 - (Contractor's Personnel at Government Establishments) | | | |
|  |  | Z5.2 |  | DEFCON 514 - (Material Breach) | | | |
|  |  | Z5.3 |  | DEFCON 528 - (Import and Export Licences) | | | |
|  |  | Z5.4 |  | DEFCON 532(A) - Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority) | | | |
|  |  | Z5.5 |  | DEFCON 539 - (Transparency) | | | |
|  |  | Z5.6 |  | DEFCON 540 - (Conflict of Interest) | | | |
|  |  | Z5.7 |  | DEFCON 566 - (Change of Control of Contractor) | | | |
|  |  | Z5.8 |  | DEFCON 608 - (Access and Facilities to be Provided by the Contractor) | | | |
|  |  | Z5.9 |  | DEFCON 612 - (Loss of Or Damage to the Articles) | | | |
|  |  | Z5.10 |  | DEFCON 624 - (Use of Asbestos) | | | |
|  |  | Z5.11 |  | DEFCON 632 - (Third Party Intellectual Property (Rights and Restrictions) | | | |
|  |  | Z5.12 |  | DEFCON 646 - (Law and Jurisdiction (Foreign Suppliers)) | | | |
|  |  | Z5.14 |  | DEFCON 658 - (Cyber) | | | |
|  |  | Z5.16 |  | DEFCON 671 - (Plastic Packaging Tax) | | | |
|  |  | Z5.17 |  | DEFCON 691 - (Timber and Wood - Derived Products) | | | |
|  |  | Z5.17 |  | DEFFORM 539B - (Publishable Performance Information – KPI Data Report) | | | |