



Specialist Switch Terms and Conditions Ref SS001

Definitions

In this Agreement, the following words shall have the following meanings:

Acknowledgement of Order means Our confirmation of an order from You or Our invoice under which or which sets out the basis on which We provide Goods or Services;

Agreement means the agreement between Specialist Switchgear and the Customer for the provision of any Goods and/or Services to a Customer as set out in these Terms and Conditions;

Customer/You means the company/partnership/individual to whom We are providing Goods or Services;

Goods means any goods, products or other tangible items We prepare for delivery to You;

Specialist Switchgear/We/Us/Our means Specialist Switchgear Limited a company registered in England under company number 01853261 whose registered address is 73-75 Bridge Street, Bury, BL9 6HH (or any other linked company notified as providing Goods or Services);

Parties means Specialist Switchgear and the Customer, and **Party** shall mean either one of them;

Price means the amount You shall pay for the Goods and/or Services We provide as set out in clause 3;

Schedule means the document We provide confirming details of the basis on which We will provide Goods and/or Services to You;

Services means those works We carry out which are not directly part of the production of any Goods which are delivered to You.

Please note all Goods and Services provided by Specialist Switchgear are provided on the basis of these Terms and Conditions unless agreed in writing by a Director of Specialist Switchgear.

Supply of Goods/Services

- 2.1 These Terms and Conditions provide the basis for the Agreement for any Goods or Services We provide. If You have been provided with a Schedule that will form part of Your Agreement where applicable together with any Acknowledgement of Order. We are not obliged to provide any Goods and/or Services where We have not provided an Acknowledgement of Order. No other terms and conditions shall apply to the provision of any goods or services by Us unless expressly agreed in writing by a Director of Specialist Switchgear.
- 2.2 We shall use our reasonable endeavours to provide the Goods and/or Services in accordance with any request, Acknowledgement of Order or Schedule. We shall use our reasonable endeavours to

- provide the Goods and/or Services within any time specified or requested, but time shall not be of the essence.
- 2.3 You acknowledge that We are not liable for any delay in providing any Goods and/or Services and that Our liability in providing any Goods and/or Services is limited in accordance with these Terms and Conditions.
- 2.4 Where We agree to provide any Services on Your site or at a site You have requested We attend Our “Conditions Relating To Work Carried Out On Site” document will apply and will be incorporated into these terms.

Price and payment

- 3.1 Where We provide You with an Acknowledgement of Order (which may be an email) which sets out the charges for the Goods and/or Services that shall be the Price You will pay for the provision of the applicable Goods and/or Services.
- 3.2 Where charges are not confirmed in an Acknowledgement of Order but is specified in a Schedule the Price shall be calculated based on the Schedule.
- 3.3 In the event the charges are not set out in an Acknowledgement of Order or specified in a Schedule the charges shall be as otherwise notified to You or Our prices where applicable at the date Goods are ready for dispatch or a Service is provided and if there is no price it shall be calculated based on Our usual charges at that point and that shall be the Price.
- 3.4 Credit terms will not apply unless We agree in writing to allow such terms and shall be subject to any terms we require.
- 3.4 Where credit terms do not apply We shall invoice You for the Price before We provide the Goods or Services and You must pay before We provide them.
- 3.5 All Prices are exclusive of VAT and any other applicable taxes, which will be charged in addition to the Price at the rate in force at the time You are required to pay.
- 3.6 If You do not make a payment by the date stated in an invoice or as otherwise provided for in an Agreement then We shall be entitled to:
- 3.6.1 charge interest on the outstanding amount at the rate of 3% a year above the base lending rate of The Royal Bank of Scotland plc, accruing daily;
 - 3.6.2 require You to pay, in advance, for any Goods or Services (or any part of the Goods) which have not yet been performed; and
 - 3.6.3 not perform any further Services (or any part of the Services) or provide any further Goods.
- 3.7 Any dispute on a Price or in the provision of Goods and/or Services must be raised with Us within 7 days of the provision of an invoice or (if later) the provision the Goods or Services.
- 3.8 All payments should be made by cheque sent to Our address, by card payment to Us or directly to the bank account We notify You of. When making a payment You shall quote relevant reference

numbers and the invoice number. We are not obliged to provide any Goods until We are in receipt of cleared funds.

The Client's obligations/Delivery

- 4.1 You shall:
- 4.1.1 co-operate with Us where the provision of the Goods and/or Services reasonably require;
 - 4.1.2 be responsible for the collection or delivery of any Goods. If We agree to provide delivery You shall be responsible for the delivery costs (including the cost for packaging and insurance);
 - 4.1.3 ensure that all Goods delivered conform with their delivery note and in the event of any short-delivered Goods must notify Us within 24 hours, failing which You agree that Goods were delivered as specified. In the event of any short-delivered Goods We shall only be liable to provide the additional Goods;
 - 4.1.4 fully inspect all Goods on delivery or collection and any damaged or faulty Goods must be reported to Us within 24 hours of delivery or collection, otherwise You agree Goods were delivered/collected in good condition. In the event of any damaged or faulty Goods We shall only be liable to provide repairs or replacement Goods;
 - 4.1.5 be responsible for the risk in any Goods from the point it is available for collection/delivery;
 - 4.1.6 ensure that Your staff and agents reasonably co-operate and assist Us;
 - 4.1.7 take delivery of the Goods from the nearest point We can deliver the Goods from Our delivery vehicle, unless agreed by Us in writing. For the avoidance of doubt, We shall not be obliged to take Goods into a premises or on to a site. In the event that any delivery is effected beyond the nearest point We are not responsible for any damage to the Goods or otherwise from the point where delivery should have been effected.
- 4.2 You shall not charge Us for any access to or use of Your facilities which are reasonably required in the provision of the Works

Returns

- 5.1 We will not accept the return of any Goods for credit unless notified of any damage or fault in accordance with clause 4.1.4 above or where We have previously agreed in writing.
- 5.2 In the event We agree to the return of any Goods other than in accordance with clause 4.1.4 We may –
- 5.2.1 refuse any return where the Goods are not in their original condition or clause 5.3 is not met; and
 - 5.2.2 make a restocking charge of:
 - 5.2.2.1 100% of the Price for the Goods in the case of any goods specially ordered or made for you or any Goods not provided as standard to Our customers; or

- 5.2.2.2 40% of the Price for the Goods to which sub-clause 5.2.2.1 does not apply; and
- 5.2.3 make a collection charge of 20% in the event We agree to collect the returned Goods.
- 5.3 Any returns must be agreed using Our returns process and be clearly marked as a return, including any return number We provide, on the outside of the returns packaging.

Title

- 6.1 Title to any Goods shall remain with Specialist Switchgear until the full Price for the Goods together with any taxes (including VAT) have been paid and no other payments to Us remain outstanding.
- 6.2 Until title to any Goods have passed to You, You shall hold all Goods to which the title remains with Us on a fiduciary basis as bailee for Us. You shall store the Goods separate from other goods in a way which allows them to be identified as Our property.
- 6.3 Notwithstanding that the title in any Goods remain Ours You may sell or use the Goods in the ordinary course of Your business at full market value which shall be held for Our account. Any sale or dealing shall be on Your own behalf and You shall deal as principal when making such sales or dealings. Until title passes to You the entire proceeds of sale or otherwise of the Goods shall be held in trust for Us and shall not be mixed with other money.
- 6.4 We shall be entitled to recover the Price (plus any applicable taxes) notwithstanding that title has not passed.
- 6.5 Until title in the Goods passes from Us You shall on request deliver up to Us such of the Goods as have not ceased to be in existence or resold. If You fail to do so We may enter upon any premises (and You authorise Us by Our servants or agents to enter those premises) owned, occupied or controlled by You where the Goods are situated and repossess the Goods. On making such a request Your rights under clause 6 shall cease.
- 6.6 You shall not pledge or in any way charge by way of security for an indebtedness any of the Goods which are Our property. Without prejudice to any other right in the event of any breach of this clause 6.6 all other sums due to Us shall become immediately due and owing.
- 6.7 You shall insure all Goods to the full Price against 'all risks' until full title has passed to You and agree that We shall be entitled to any insured payment relating to the Goods.

Exclusions

- 7.1 We shall not be liable to You for any loss or damage to any goods (including without limitation the Goods, drawings or any patterns) which belong to You and; We use, and/or store for You as part of any Service or otherwise, and/or are on any of Our premises.
- 7.2 We shall not be liable for any loss or damage or expense arising out of a defect or inaccuracy in any drawings You supply. In the event of any inaccuracy or defect in the drawings You supply You shall reimburse Us for any additional costs We may incur to rectify those drawings and or any subsequent works.

Warranties, liability and indemnities

- 8.1 Each of the Parties acknowledges that, in entering into an Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in the Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes or limits liability for death, personal injury or fraud.
- 8.2 We warrant that We will use reasonable care and skill in producing any Goods and/or performing any Services to the standard generally accepted within the industry. However, We provide no warranty that any Goods and/or Services shall be provided by any particular time.
- 8.3 If We provide any Goods and/or perform any Services (or any part thereof) negligently or in breach of this Agreement, then, if requested by You, We will re-perform the relevant part of the Services or replace any Goods (where applicable), subject to clauses 9.2 below. Your request must be made within 7 days of the date of delivery of the provision of any Goods or Service in question.
- 8.4 Neither Party shall be liable to the other for any indirect or consequential losses.
- 8.5 Except in the case of death or personal injury caused by Our negligence or fraud, Our liability under or in connection with an Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever shall not exceed the higher of £500 or the Price of and Goods or Services to which the claim relates.
- 8.6 Save as provided in this clause 8 We shall not be liable in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by You or any third party in connection with any Agreement.

Cancellation

- 9.1 Once We have provided an Acknowledgement of Order or accepted an order You cannot cancel the Agreement except with Our written agreement and on terms that you shall indemnify Us in full against any and all costs, loss, damages, charges and expenses We incur, and We shall retain the right to the fees set out in clause 5 above. We will allow you to cancel an Agreement for any Goods other than those to which clause 5.2.2.1 apply within 30 days of the Agreement being made, subject to the terms of clause 5.
- 9.2 We may cancel an Agreement at any time on the provision of 14 days written notice to You. On giving such notice We shall promptly repay any sums paid in respect of the Price for Goods or Services which have not been provided. We shall not be liable for any loss or damage whatever arising out of such cancellation.
- 9.3 If an Agreement is cancelled for any reason You shall pay for all Goods and/or Services provided up to the date of cancellation, and for all expenditure Specialist Switchgear reasonably incur after the

date of cancellation from commitments reasonably and necessarily incurred by it for the provision/performance of the Goods/Services prior to the date of cancellation.

Termination/Variation

- 10.1 Without prejudice to the other remedies or rights We may have, We may terminate an Agreement, at any time, on written notice to You:
- 10.1.1 if You are in material breach of your obligations under any Agreement and, if the breach is capable of remedy within 14 days, the breach is not remedied with 7 days of You receiving notice which specifies the breach and requiring it to be remedied; or
 - 10.1.2 if You become insolvent or if an order is made or a resolution is passed for Your winding up (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of Your assets or business, or if You make any composition with Your creditors or take or suffer any similar or analogous action in consequence of debt.
- The notice shall take effect as specified in the notice.
- 10.2 On termination of an Agreement, You shall pay for all Goods and/or Services provided up to the date of termination, and for all expenditure Specialist Switchgear reasonably incur after the date of termination from commitments reasonably and necessarily incurred by it for the provision/performance of the Goods/Services prior to the date of termination.
- 10.3 We may vary any term of an Agreement (including the Price) at any time. We shall provide You with 7 days' notice of any change We make.

Storage

- 11.1 We will store the items We agree to store for You and any items We produce for You as part of the Services on the terms of this Agreement.
- 11.2 We will store items in the place specified by us or as otherwise agreed.
- 11.3 We may change the place of storage at any time for another place of storage which provides the same protection for the items being stored. The level of protection shall be determined by Us.
- 11.4 Insurance for the goods to be stored is to be provided by You and We have no liability for any damage to items We hold in storage.
- 11.5 We will not make charges for the storage of items where these are held as part of Our usual business processes. If any items are held by Us which should have been collected or delivered to You We may make reasonable storage charges.

General

- 12.1 **Force majeure**

We shall not have any liability under or be deemed to be in breach of any Agreement for any delays or failures in performance of this Agreement that result from circumstances beyond Our reasonable control.

12.2 **Amendments**

This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

12.3 **Entire agreement**

Each Agreement contains the whole agreement between the Parties in respect of the Goods/Services. The Parties confirm that they have not entered into an Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

12.4 **Notices**

Any notice to be given under an Agreement shall be in writing and shall be sent by first class mail to the address of the relevant Party set out in clause 1 or by email to the usual email address for the relevant Party. Delivery shall be assumed on the second day after posting any mail or the day after an email was sent.

12.5 **Law and jurisdiction**

The validity, construction and performance of all Agreements shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

12.6 **Third parties**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and, notwithstanding any other provision of an Agreement, each Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

12.7 **Set off**

We may set off any sums due from You against a Price paid for other Goods or Services (whether this is to be repaid to You or not). You may not set off any sums due to Us against any liability or claim You may have against Us or any third party.

12.8 **Assignments**

We may assign, transfer or sub-contract any or all of the duties, Services, obligations and benefits in an Agreement to a third party, at Our sole discretion.