

## Terms and Conditions

### Total Utility Connections Limited

#### 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

##### 1.1 Definitions:

**Business Day**

a day other than a Saturday, Sunday or public holiday in England and Wales, when banks in London are open for business.

**Commencement Date**

has the meaning given in Clause 2.3.

**Completion**

means the date TUC complete the Services, as notified by TUC to the Customer.

**Conditions**

these terms and conditions as amended from time to time in accordance with clause 15.6.

**Contract**

the contract between TUC and the Customer for the supply of Services and Equipment in accordance with these Conditions and the Proposal.

**Customer**

the person or firm who purchases Services from TUC as shown in the Proposal

**Data Protection Legislation**

all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Deliverables**

the deliverables set out in the Proposal produced by TUC for the Customer.

**Delivery Location**

has the meaning given in clause 4.

**Force Majeure Event**

has the meaning given to it in clause 14.

**Equipment**

the equipment or apparatus to be supplied by TUC as part of the Services and as set out in the Proposal.

**Intellectual Property Rights**

patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order**

the Customer's order for the supply of Services and Equipment, as set out the Customer's written acceptance of TUC's Proposal.

**Proposal**

means the proposal document provided by TUC to the Customer detailing the Services, draft design documentation and the Deliverables.

**Services**

the services, including the Deliverables, supplied by TUC to the Customer.

**TUC**

Total Utility Connections Limited, registered in England and Wales with company number 07655073 and registered office at Avalon House, 5-7 Cathedral Road, Cardiff, CF11 9HA.

**TUC's Materials**

has the meaning given in clause 6.1.8.

**Interpretation:**

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its personal representatives, successors and permitted assigns.

A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

A reference to **writing** or **written** includes email.

**2. BASIS OF CONTRACT**

- 2.1 Any Proposal given by TUC before the Customer makes an Order for Services is not a binding offer by TUC to supply Services. The Proposal is only valid for a period of 45 calendar days from its date of issue. TUC reserves the right to amend or withdraw the Proposal at any time prior to the Customer placing the Order.

- 2.2 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions.
- 2.3 The Order shall only be deemed to be accepted when TUC issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4 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.

### 3. EQUIPMENT

- 3.1 TUC shall deliver, or arrange for TUC personnel to bring with them when providing the Services, the Equipment to the Customer's location set out on the Proposal (**Delivery Location**).
- 3.2 TUC reserves the right to amend the specification of the Equipment if required by any applicable statutory or regulatory requirement, and TUC shall notify the Customer in any such event.

### 4. TITLE AND RISK

- 4.1 The risk in the Equipment shall pass to the Customer on delivery of the Equipment to the Delivery Location.
- 4.2 Title to the Equipment shall not pass to the Customer
- 4.3 The Customer shall between delivery of the Equipment to the Delivery Location and Completion:
  - 4.3.1 store the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as TUC's property;
  - 4.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
  - 4.3.3 maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price on TUC's behalf from the date of delivery;
  - 4.3.4 notify TUC immediately if it becomes subject to any of the events listed in clause 12.2.1 to clause 12.2.3; and
  - 4.3.5 give TUC such information relating to the Equipment as TUC may require from time to time.
- 4.4 The Customer shall indemnify TUC against all liabilities, costs, expenses, damages and losses suffered or incurred by TUC in relation to the Equipment, arising out of or in connection with any breach of the warranties contained in clause 4.3.

### 5. SUPPLY OF SERVICES

- 5.1 TUC shall supply the Services to the Customer in accordance with the description of the Services in the Proposal in all material respects.

- 5.2 TUC shall supply the Services during normal business hours. In this clause 5.2, 'normal business hours' means 8:30am to 5.00pm Monday to Thursday and 8:30 to 4:30 Friday on a day that is not a public holiday. In the event the Customer requests that the Services be provided outside of normal business hours, TUC reserves the right to increase the charges for the Services and will notify the Customer of any increase.
- 5.3 TUC shall use all reasonable endeavours to meet any performance dates for the Services specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 5.4 TUC reserves the right to amend the Services if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and TUC shall notify the Customer in any such event.
- 5.5 In the event the Services are amended pursuant to clause 5.3 and such amendment results in additional charges over and above the charges set out in the Proposal, TUC shall notify the Customer of such additional charges and request the Customer's approval to such additional charges. TUC will not be required to provide the Services until such time as the additional charges have been agreed and paid for by the Customer in writing unless otherwise stipulated in the Proposal.
- 5.6 TUC warrants to the Customer that the Services will be provided using reasonable care and skill.
- 5.7 The Services will not include specialist works not identified in the Proposal including without limitation bridge crossings and/or watercourses along our intended route and/or at Customers' premises. To the extent any specialist services are required, TUC will notify the Customer and agree any additional charges which will apply for providing such additional services.
- 5.8 TUC shall obtain and maintain any necessary licences, permissions and consents applicable to TUC which may be required for TUC to provide the Services to the Customer.

## **6. CUSTOMER'S OBLIGATIONS**

- 6.1 The Customer shall:
  - 6.1.1 ensure that the terms of the Order are complete and accurate;
  - 6.1.2 co-operate with TUC in all matters relating to the Services;
  - 6.1.3 provide TUC, its employees, agents, consultants and subcontractors, with access to the Delivery Location, and other facilities as reasonably required by TUC to provide the Services;
  - 6.1.4 provide TUC with such information and materials as TUC may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 6.1.5 prepare the Customer's premises for the supply of the Services in accordance with the technical guidelines provided;

- 6.1.6 obtain and maintain any necessary licences, permissions and consents applicable to the Customer which may be required for TUC to provide the Services to the Customer before the date on which the Services are to start;
- 6.1.7 comply with all applicable laws;
- 6.1.8 keep all materials, equipment, documents and other property of TUC including the Equipment (TUC's Materials) at the Customer's premises in safe custody at its own risk, maintain TUC's Materials in good condition until returned to TUC, and not dispose of or use TUC's Materials other than in accordance with TUC's written instructions or authorisation;
- 6.1.9 grant, or procure the grant, of all wayleaves or easements required over the Customer's premises, and provide or procure the installation of ducts for onsite road crossing and for service pipes/cables or pipe/cable entry at the Customer's premises and agree service terminations in a position acceptable to TUC and the adopting network owner;
- 6.1.10 if stipulated in the proposal, provide or procure the installation of ducting for road crossings from the footpath to the Customer premises to which the connection is required, such connection to terminate where possible below external meter cabinets at the Customer premises;
- 6.1.11 if stipulated in the proposal, be responsible for carrying out, or procuring the carrying out of all trenching and associated civils activities for installation of our infrastructure at the Customer's premises and for backfilling all trenches once TUC have laid and covered the pipe and/or cable, for reinstatement. The Customer is required to expose all mains at the service connection point and provide suitable excavation below or around the external meter cabinet where the service pipe, cable, or duct terminates; and
- 6.1.12 carry out all work and prepare the Customer's premises for the Services in accordance with the requirements set out in the Proposal.
- 6.2 The Customer will pay all costs, expenses and charges payable for obtaining such wayleave, easement or other consent from third parties pursuant to clause 6.1.9, in addition to the charges payable for the Services and Equipment, as set out in the Proposal. To the extent the additional costs, expenses and charges payable to a third party for any wayleave, easement or other consent for the Services, the Customer can terminate this Contract by giving TUC no less than four 4 weeks' notice.
- 6.3 If TUC'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):
  - 6.3.1 without limiting or affecting any other right or remedy available to it, TUC shall 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 in each case to the extent the Customer Default prevents or delays TUC's performance of any of its obligations;

6.3.2 TUC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from TUC's failure or delay to perform any of its obligations as set out in this clause 6.2; and

6.3.3 the Customer shall reimburse TUC on written demand for any costs or losses sustained or incurred by TUC arising directly or indirectly from the Customer Default.

## **7. CHARGES AND PAYMENT**

7.1 The charges for the Services shall be the charges set out in the Proposal, The Proposal excludes any costs for specialist works including reinforced concrete, specialist surfaces and specialist traffic managements or highway costs. If any additional costs for specialist works are to be incurred for the performance of the Services, TUC will notify the Customer in advance of incurring such charges and will charge the Customer for such costs in addition to the charges quoted in the Proposal.

7.2 TUC reserves the right to:

7.2.1 increase the charges payable under the Contract, by giving notice to the Customer at any time, to reflect any increase in the cost of the Equipment or the Services to TUC due to:

- a) any factor beyond the control of TUC (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, other manufacturing costs and additional charges for works rendered by an upstream network owner); or
- b) the Customer's premises being on contaminated land, which was not notified to TUC prior to TUC issuing the Proposal; or
- c) any request by the Customer to change the delivery dates of Equipment.

7.2.2 increase the charges payable under the Contract, in line with TUC's then current prices, by giving notice to the Customer, if Completion does not take place within 6 months from the Commencement Date.

7.3 TUC shall invoice the Customer for the Services in advance on or after the Commencement Date, unless otherwise specified in the Proposal.

7.4 The Customer shall pay each invoice submitted by TUC:

7.4.1 immediately on receipt of the invoice; and

7.4.2 in full and in cleared funds to a bank account nominated in writing by TUC, and time for payment shall be of the essence of the Contract.

7.5 All amounts payable by the Customer under the Contract are (where applicable) exclusive of value added tax (which is chargeable from time to time) (**VAT**). Where amounts payable by the Customer are subject to VAT, the Customer shall, on receipt of a valid VAT invoice from TUC, pay to TUC such additional amounts in respect of VAT as are chargeable on the supply of the Services or Equipment at the same time as payment is due.

- 7.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7.7 The Proposal is based on the understanding that (if applicable), the asset value rebate that can be claimed by the Customer is claimed within a period of two years from Completion.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be adopted by the Network Owner.
- 8.2 TUC grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables.
- 8.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 8.2.
- 8.4 The Customer grants to TUC a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to TUC for the term of the Contract for the purpose of providing the Services to the Customer.

## **9. DATA PROTECTION**

- 9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 9.2 Without prejudice to the generality of clause 9.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any personal data to TUC for the duration and purposes of the Contract.
- 9.3 Any personal data that the Customer provides to TUC will be processed in accordance with TUC's Privacy Policy. TUC Privacy Policy is available at [www.tucltd.co.uk](http://www.tucltd.co.uk).

## **10. CONFIDENTIALITY**

- 10.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.
- 10.2 Each party may disclose the other party's confidential information:
- 10.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10; and

10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **11. LIMITATION OF LIABILITY**

11.1 Nothing in the Contract limits any liability which cannot legally be limited by law, including but not limited to liability for:

11.1.1 death or personal injury caused by negligence;

11.1.2 fraud or fraudulent misrepresentation.

11.2 Except for any legal responsibility TUC cannot exclude by law as set out in clause 11.1, TUC is not legally responsible for any of the following losses:

11.2.1.1 loss of profits;

11.2.1.2 loss of sales or business;

11.2.1.3 loss of agreements or contracts;

11.2.1.4 loss of anticipated savings;

11.2.1.5 loss of use or corruption of software, data or information;

11.2.1.6 loss of or damage to goodwill; and

11.2.1.7 indirect or consequential loss.

11.3 Subject to clause 11.1, under no circumstances will TUC's total liability to the Customer for all claims arising under the Contract exceed the total charges paid by the Customer to TUC in respect of the Services supplied by TUC under the Order for which the breaches occurred.

11.4 This clause 11 shall survive termination of the Contract.

## **12. TERMINATION**

12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if, the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 calendar days after receipt of notice in writing to do so.

12.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party, if:

12.2.1 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order



of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

12.2.2 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

12.2.3 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.3 Without affecting any other right or remedy available to it, TUC's may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

12.4 Without affecting any other right or remedy available to it, TUC may suspend the supply of Services or all further deliveries of any Equipment under the Contract, if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.2.1 to clause 12.2.3, or TUC reasonably believes that the Customer is about to become subject to any of them.

12.5 Without affecting any other right or remedy available to it, TUC may terminate this agreement on giving not less than one (1) months' written notice to the Customer.

### **13. CONSEQUENCES OF TERMINATION**

13.1 On termination of the Contract:

13.1.1 the Customer shall immediately pay to TUC all of TUC's outstanding unpaid invoices and interest and, in respect of Services and Equipment supplied but for which no invoice has been submitted, TUC shall submit an invoice, which shall be payable by the Customer immediately on receipt;

13.1.2 TUC shall submit an invoice, which shall be payable by the Customer for all costs reasonably incurred or expended by TUC, including all non-refundable fees incurred by TUC in providing the Services up to the date of termination;

13.1.3 in respect of any and all costs incurred by TUC, or which TUC is liable, in connection with any contract entered into between TUC and a third party in connection with delivering the Services under the Contract, including without limitation, forfeited deposits or cancellation fees paid or payable to third parties, TUC shall submit an invoice, which shall be payable by the Customer;

13.1.4 the Customer shall return all of TUC's Materials and any Deliverables or Equipment which have not been fully paid for. If the Customer fails to do so, then TUC may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

13.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

- 13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

#### **14. FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).

#### **15. GENERAL**

##### **15.1 Assignment and other dealings.**

- 15.1.1 TUC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 15.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of TUC.

##### **15.2 Notices.**

- 15.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 15.2.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - 15.2.1.2 sent by email to the company in the Proposal or as otherwise notified in writing by the other party.
- 15.2.2 Any notice shall be deemed to have been received:
- 15.2.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
  - 15.2.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
  - 15.2.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 15.2.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 15.2.3 This clause 15.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 15.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 15.3 shall not affect the validity and enforceability of the rest of the Contract.
- 15.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 **Entire agreement.**
- 15.5.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.5.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 15.6 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties.
- 15.7 **Third party rights.** Unless it expressly states otherwise, no one other than a party to this Contract has any right to enforce any term of this Contract.
- 15.8 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 15.9 **Jurisdiction.**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.