

Definitions

- (1) "Secure Power" means Secure Power Limited, its subsidiaries and any of its subcontractors.
- (2) "Client" means the client to whom Secure Power is providing the Services.
- (3) "Services" means the services which Secure Power will perform as described in a quotation or a tender submission
- (4) "Equipment" means the products sold by Secure Power as set out in a quotation or a tender document
- (5) "Normal Working Hours" means 0900hrs to 1730hrs on a Working Day.
- (6) "Working Day" means Monday to Friday, excluding Bank or other Public holidays in England.
- (7) "Out of Hours" means time outside of Normal Working Hours.
- (8) "Data" means Client data to the extent that it relates to their requirements for Services or is necessary for the proper provision of the Services to the Client
- (9) "Returns Policy" means Secure Power's returns policy document.

Purchase Orders

- (1) All contracts for the provision of Services and Equipment by Secure Power shall be deemed to incorporate these terms and conditions, which shall prevail over any other terms from the Client. Once an order has been received, if the Client wishes to cancel the order, the Client will be liable for the cancellation and postponement charges as set out in Secure Powers returns policy.
- (2) All orders are subject to acceptance and to availability to provide the Services ordered: Secure Power is entitled to refuse any order placed by the Client.
- (3) The Client undertakes that all details it provides to Secure Power for the purpose of purchasing Equipment or Services are correct.

Prices

- (1) Services and Equipment, together with VAT, are invoiced at the price as set out in a quotation or tender submission. The tender submission and quotation pricing are valid for 30 days only from the date of the tender submission or quotation, unless otherwise stated therein.
- (2) APC pricing is valid for 14 days.
- (2) Secure Power reserves the right to modify the prices from time to time for future orders.
- (3) Any estimates made by Secure Power for the cost of any Services and Equipment shall be estimates only. Whenever estimated prices are quoted, Secure Power shall use all reasonable efforts to perform the relevant Services at the estimated price but in no event shall such estimates constitute a fixed price or a not-to-exceed price agreement unless stated otherwise in a quotation or tender documentation.
- (4) Any prices quoted by Secure Power in a local currency may be adjusted by Secure Power due to fluctuations in GBP exchange rate.

Delivery, Ownership and Risk

- (1) Secure Power shall use reasonable endeavours to despatch Equipment by the date agreed with the Client, but does not accept liability for failure to deliver within the stated time where this is caused by circumstances beyond Secure Power's control. This may include, but shall not be limited to such as delays caused by couriers or manufacturer lead times. If it appears a delay may be likely, Secure Power shall use all reasonable efforts to contact the Client and advise of the delay.
- (2) Secure Power does not accept liability for shortages or damage to deliveries unless the Client notifies Secure Power of the shortage or damage in writing within 48 hours of receipt of the delivery.
- (3) Clients are required to be able to accept the Equipment when they are ready for delivery within Normal Working Hours.
- (4) Ownership of the Equipment does not pass to the Client until payment is received in full by Secure Power. In any event ownership in software shall remain with the software vendor.
- (5) If the Client cannot accept delivery, Secure Power may at its option: (a) store and insure the Equipment at the Client's expense and risk or (b) sell the Equipment at the best price reasonably obtainable and (after deducting reasonable storage insurance and selling costs) pay to the Client any excess over the sale price or charge the Client for any shortfall or (c) re-arrange delivery provided that Secure Power may charge the Client for the additional delivery costs incurred.
- (6) Some products supplied by Secure Power fall within the scope of the EU regulation 428/2009 and that these goods are subject to controls when transferred outside of the EU. In case of export of these products outside of the EU, Client will be responsible for obtaining the required licences from the relevant authority.

Product specifications

(1) If Secure Power cannot supply the Equipment ordered by the Client, Secure Power reserves the right to offer Equipment of equal or superior quality at no extra cost. In such a case, if the Client does not wish to accept the alternative Equipment offered, it may cancel the order and require the refund of any money paid to Secure Power in respect of that order, including carriage charges. This shall be the sole remedy of the Client in these circumstances.

Pre-requisites & Essential Requirements

(1) The Client shall provide Secure Power and its staff sufficient working space as well as such access to the Client's personnel, files and equipment at the Client's facility as Secure Power reasonably deems necessary for the performance of the Services.

(2) The Client shall:

- Comply with the obligations set out in these terms and conditions;
- Undertake the specific obligations specified in the a statement of works, a RAMS document, quotation or tender document;
- Ensure that any assumptions or dependencies set out in a statement of works, quotation or tender document are fulfilled or complied with as the case may be.

(3) If the Client fails to fulfil any of its responsibilities under these terms and conditions in a proper and timely manner and such failure causes a delay in the performance of the Services or results in additional costs to Secure Power, Secure Power shall take such action as it deems reasonably prudent and shall provide the Client with a written specification of such delay and the resulting costs. The Client agrees to pay these costs to Secure Power at the then current standard Secure Power rates for the Services involved.

(4) In the event that Secure Power removes any of the Client's hardware from its site, unless it is otherwise specifically agreed in writing by the parties at the time, Secure Power shall be entitled to assume that all data of a sensitive nature and personal data (as defined by the Data Protection Legislation) has been removed from the tapes or other media and the Client agrees to indemnify Secure Power from all and any claims and proceedings made or brought by any person in respect of any loss, damage or distress to that person by reason of any wrongful disclosure of any personal data on any such media or tapes.

(5) Client shall be solely responsible for maintaining back-up copies of all data.

(8) When electrical works are not required, all agreed Equipment locations will be final and adequate power sockets must be available.

(9) No additional work will be undertaken if not included on a Secure Power quotation or a tender document. A Request for Change Document may be drawn up by Secure Power to cover such work but it must be agreed and signed by the Client before such additional work can be carried out.

(10) Under no circumstances will any Equipment be released or the Client given access to any Equipment, until Secure Power has finished the Services unless otherwise expressly stated in the quotation or tender documentation.

(11) Any existing equipment belonging to the Client being utilised or connected, must be fully operational and virus free, and fully accessible to Secure Power during the installation.

(12) Delays on site caused by faulty equipment, not supplied by Secure Power, services not being ready, or access restrictions may incur additional charges at the then current Secure Power rates.

Service Performance

(1) Secure Power shall use reasonable endeavours to provide the Services by the date agreed with the Client, but does not accept liability for failure to deliver within the stated time where this is caused by circumstances beyond Secure Power's reasonable control. If a delay is likely, Secure Power shall contact the Client and advise of the delay.

(2) Unless otherwise agreed, the arrival time on site is for a 9.00am start on the date booked.

(3) Installation and completion dates are an estimate and are dependant on the Client complying with its obligations and third parties complying with their obligations. Installation and completion dates are not guaranteed. If, solely due to Secure Power's negligence, a component of the Services is unreasonably delayed the Client's sole remedy is to reject that component.

(4) Clients are required to give Secure Power access to provide/install the Services within Normal Working Hours and Out of Hours (where agreed).

(5) If the Client cannot allow Secure Power access to provide/install the Services on the agreed date Secure Power may re-arrange provision/installation of the Services provided that Secure Power may charge the Client for the additional costs incurred at the then current Secure Power rates.

(6) It is the responsibility of the Client to ensure that the Services provided correspond with the a statement of works, quotation or tender document.

(7) Upon completion of the Services, the Client will be notified of the same. The Services are deemed to be accepted if the Client has not raised any concerns in writing with Secure Power within 3 days thereafter.

Software

Any software provided as part of the Services is subject to any accompanying End User License Agreement and the terms thereof. The Client agrees to be bound by the same.

Payment

- (1) Payment is due on presentation of invoice unless credit terms have been agreed in writing with Secure Power, in line with the Secure Power credit application process. Secure Power shall invoice the Client: on acceptance of the Client's order in respect of software; on shipment in respect of hardware; on completion of professional services or monthly in arrears in respect of recurring services unless otherwise agreed in writing; and in advance in respect of maintenance and support services.
- (2) If payment is not made on the due date, Secure Power will be entitled to charge interest daily on the outstanding balance at the rate of 3% above the Bank of England's base lending rate from time to time and in any event an administration fee in the sum of £50 shall be applied to each overdue invoice.
- (3) The provision of any services outside the scope of works detailed in a quotation or tender document will be billed to the Client, at the then current Secure Power rates for such services.
- (4) Amounts stated do not include taxes. All additional taxes or duties which Secure Power shall have to pay or collect in connection with the provision of the Services shall be borne by the Client (except for taxes based on Secure Power's income). VAT will be charged at the rate prevailing at the date of invoice.
- (5) Settlement payments shall be net 30 days to approved trade accounts (unless payment for goods previously supplied is overdue) otherwise payment shall be before dispatch or by arrangement on invoice. These terms are subject to status, and approved by Secure Power by formal communication. Confirmation must be received from Secure Power to confirm that settlement is applicable to the account. Secure Power withhold the right to refuse acceptance of settlement if other amounts are owed on the account, or if the business ceases trade.
- (6) Secure Power reserves the right to surcharge any account settled by Credit/Charge card by 5%.

Cancellation/Postponement

Once a purchase order has been received for the services defined within a quotation or tender document, the Client will be liable for the cancellation and postponement charges of 25% handling charge plus any associated aborted and logistics charges. If the purchase order is cancelled less than 48 hours notice before the commencement date of services then 100% of the order value will still be owed.

Notwithstanding the above, any built-to-order or non-cancellable hardware or software cannot be cancelled.

Returns Policy

Products;
All products can be returned within 14 days of delivery, providing that:

- the product is not damaged, unused and unopened
- the product is returned in the same condition as it was sent out

Note: If the product has been signed for and is later found to be damaged then the liability lies with the customer.

If the product being returned is due to a purchasing error, and or an administrative error then the delivery charges will still apply for the delivery and collection within the 14 day period.

The 14 day period does not apply to specialist items that are custom made.

The customer will receive a credit note for the full value of the original order providing that the item(s) is returned within the terms mentioned in the returns policy.

Restocking Fees;

Any product returned within the 14 day period will not incur re-stocking charges (unless it is a specialist item) but the delivery and collection of the products will be chargeable. This is on the condition that the product is in good condition, and is unopened.

Any product up to 3kVA can be returned within 28 days but a 25% restocking fee will apply after the first 14 day period.

Any product between 4-20kVA single phase can be returned within 28 days but a 30% restocking fee will apply after the initial 14 day period.

Any product over 20kVA can be returned within 28 days but a 40% restocking fee will apply after the initial 14 day period.

Any three phase products can only be returned within the first 14 day period, a restocking fee can be agreed with senior management up to the 28 day period, subject to written approval and confirmation.

Specialist products or made to order products cannot be returned unless agreed by a Secure Power employee. If a return of a specialist item is agreed then a minimum of 50% restocking fee will apply.

Faulty Products

All products deemed to be faulty will undergo the manufacturer's scrutiny and standard checks, if the item is faulty then a replacement unit will be offered free of charge. The faulty item will also be collected at no additional cost to the customer.

Secure Power will not offer a refund if:

- the item was declared faulty before the sale and customer agreed to buy a faulty item
- the customer has caused further damage to the product by attempting a repair, or a third party has attempted a repair on the customer's behalf and caused damage to the product
- If the item is trying to be returned after the returns policy terms

Assumptions and Exclusions

- All products are labelled with the returns reference, obtained from a Secure Power representative
- Any items waiting for collection must be stored in a dry area with no potential damage to the product
- The return period starts from the delivery date
- Failure to notify Secure Power within the first 28 days of a faulty product may result in a refusal to replace the item
- If an employee of Secure Power agrees terms different to the terms set out in the returns policy then the customer must provide written confirmation before the terms can be enforced, these terms must also be approved by senior management

Confidentiality and Data Protection

(1) Both Secure Power and the Client acknowledge that they may receive information and material constituting trade secrets concerning the business, finances, systems, products and documentation of the other ("Confidential Information"). Confidential Information shall be limited to information clearly identified as confidential. Both Secure Power and the Client agree to protect and preserve the confidentiality of the other's Confidential Information using the same standard of care as it uses to protect its own Confidential Information of a similar nature, but in no event using a lesser standard than a reasonable standard of care. The parties agree to hold each other's Confidential Information in confidence while the Services are being performed and for a period of three years thereafter.

(2) Both Secure Power and the Client will only divulge Confidential Information to those employees, sub-contractors and agents who have entered into a binding written agreement to maintain confidentiality and for whom knowledge of the Confidential Information is necessary for the proper performance of their duties.

(3) Each Party shall process personal data in accordance with the Data Protection Legislation (which includes applicable data protection legislation including the General Data Protection Regulation (EU 2016/679) (GDPR), the Data Protection Directive (95/46/EC), and any national implementing laws, regulations and secondary legislation) as amended from time to time. Data processing will be accomplished through electronic and non-electronic means, for the purpose of these terms and conditions. Terms used throughout this clause including "data controller", "data processor", "data subject", "personal data" and "processing" are as defined in the Data Protection Legislation.

Client is responsible for obtaining the consent of all Client related data subjects whose personal data is provided to or otherwise made available to Secure Power pursuant to these terms and conditions. Client authorises Secure Power to engage sub-processors to the extent required for the performance of the terms and conditions and/or order and/or tender documentation. Secure Power shall in respect of any personal data of the Client processed under these terms and conditions to maintain such personal data under appropriate, commercially reasonable and sufficient technical and organisational security measures to protect such personal data or information and both Parties warrant to have taken all appropriate registrations under relevant EU data protection legislation. Client authorises Secure Power to transfer and (sub)process any personal data outside of the European Economic Area (EEA) in order to perform these terms and conditions and/or the orders and/or tenders, other legal obligations and/or for Secure Power's other legitimate interests, provided that such transfer is made in accordance with Data Protection Legislation. Transfer made within the Secure Power group of companies will be made under a legal framework compliant with the Data Protection Legislation such as the Privacy Shield or the European Commission approved Model Contract Clauses. Secure Power's privacy policy shall apply to orders placed and tender documents. A copy of the policy can be found on Secure Power's website. Notwithstanding any other provision of these terms and conditions, Client agrees that Secure Power shall not be considered a data processor or data controller or in any other way have any responsibilities or liability (and the Client holds Secure Power harmless) in respect of the processing of personal data pursuant to a product or Service (including cloud service) provided by a third party supplier of product or services transacted by Secure Power and where Secure Power is not processing such data. Such processing of personal data shall be subject to the arrangements and contract terms entered in to directly between Client and the third party provider.

Intellectual Property

(1) All service data collected by Secure Power (including but not limited to asset data bases, call data and system configuration details) shall belong to Secure Power.

(2) All Intellectual Property rights in the Services provided by Secure Power shall belong to Secure Power.

Warranties

(1) Secure Power warrants that:-

(a) it shall use reasonable skill and care to carry out the Services to the generally accepted industry standards and the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel in a professional and workmanlike manner

(b) the Services will be free from defects for a period of 30 days after completion. The Client shall report in detail any deficiencies in the Services to Secure Power in writing within 3 days of completion of the Services. In the event of a breach of warranty, Client shall allow Secure Power the opportunity to correct errors or re-perform the Services so as to comply with the warranties set out in sub clauses (a) and (c).

(c) the Services, when supplied, shall conform to the description and service level agreements set out in the relevant statement of works, quotation or Secure Power tender documentation.

(d) the provision of the Services and Clients' use thereof shall not infringe any Intellectual Property Rights of any third party. This warranty does not apply insofar as it relates to items of hardware, software or other equipment manufactured by third party OEM's;

(e) where the provision of the Services involves the supply or fitting of spare parts, ownership to such parts shall pass to the Client once the relevant part is fitted and the parts removed shall become the property of Secure Power, unless otherwise specified in a statement of works, quotation or a Secure Power tender document;

(2) Secure Power cannot be held responsible for any fault or damage not caused by Secure Power. In the event of a claim arising relating to the level of skill and judgement applied in the course of providing Services, Secure Power reserves at its sole discretion the right to appoint an independent expert in the field to appraise the work carried out in the execution of the Services. Additionally, Secure Power cannot be held responsible for equipment installed or configured when the equipment has subsequently been altered or configured by persons other than Secure Power.

(3) In relation to Equipment, Secure Power warrants that Secure Power does not sell products on a trial basis. Clients are strongly advised to check suitability and specifications of Equipment before ordering. In some instances, Clients may benefit from special price discounts issued by a manufacturer specifically for their benefit. Such Equipment is not returnable to the manufacturer and may not be sold to other Clients.

(4) Unless otherwise stated in the manufacturer's documentation, all Equipment delivered to a UK mainland address carries a manufacturer's warranty. Clients who wish to make a warranty claim must comply with the manufacturer's instructions and warranty procedure.

(5) No software on which seals have been broken can be returned for credit. If any software discs are faulty, the manufacturer will replace them. Please note Software Licences are non returnable unless the software is materially non-compliant with its specification or the physical media on which it is supplied is defective.

(6) Except as set out here all warranties and conditions, whether express or implied by statute, common law or otherwise relating to the Services are hereby excluded to the fullest extent permitted by law.

(7) The Client warrants that it has the authority to provide information and personal data to Secure Power and authorises Secure Power to handle the Client's information and personal data and to transfer it to third parties to the extent required to deliver the Services.

19. UK WARRANTY: All Secure Power products are manufactured under carefully controlled conditions to high quality standards. Under the conditions of service specified they may be expected to give a long and trouble free operating life. In case of failure under normal service and within one year of the date of purchase Secure Power or its Appointed Agents should be consulted. Their liability will however be limited to the repair or replacement of defective units at their absolute discretion. Any advice given other than as a result of an on site evaluation by Secure Power visiting engineers and for which a fee will be charged is given in good faith but without responsibility. Moreover neither Secure Power nor its appointed Agents can accept any responsibility for failure or poor performance of any of its products resulting from operation outside of rated limits or from any other misuse or abuse whatsoever. In any event Secure Power does not accept any liability whatever for consequential loss or damage resulting from the use in any way of its products. All goods subject to claims under this Warranty must be returned to our factory by prior arrangement only with the carriage home paid by the sender.

Secure Power's liability

(1) Secure Power shall under no circumstances be liable for any consequential or indirect damage or loss, however caused, including (but not restricted to) loss of business or profits in the ordinary course, loss of goodwill, damage to trading relationships loss of data and other financial loss. Secure Power's liability in respect of all other losses shall be limited to the invoiced amount of the relevant order.

(2) Nothing in this agreement shall limit Secure Power's liability for death, personal injury fraud or fraudulent misrepresentation.

Force Majeure

(1) Where, in spite of its reasonable efforts, Secure Power is unable to perform an obligation due to circumstances beyond its reasonable control, it shall not be deemed to be in breach of its contract with the Client.

Termination

(1) If either party materially breaches any of its obligations and the breach has not been remedied within 30 days after written notice is given to the defaulting party specifying the breach, the party not in default may by written notice terminate this agreement (including the relevant Statements of Works or Packaged Service Description) as of the date specified in such termination notice.

(2) Either party may terminate this agreement or the relevant statement of works, quotation or Secure Power tender documentation or suspend work if:

(a) the other party fails to promptly pay any amount due to be paid under this agreement or statement of works or quotation or Secure Power tender documentation; or

- (b) the other party passes a resolution for winding up (save for the purpose of solvent amalgamation or reconstruction) or suffers a winding-up order being made against it; or
- (c) a receiver, administrative receiver, administrator or similar officer is appointed over the other party.

Errors and Omissions

- (1) Secure Power makes every effort to ensure that all prices and descriptions quoted are correct and accurate. In the case of a manifest error or omission, Secure Power will be entitled to rescind the contract, notwithstanding that it has already accepted the Client's order and/or received payment from the Client. Secure Power's liability in that event will be limited to the return of any money the Client has paid in respect of the order. In the case of a manifest error in relation to price, the Client will be entitled to purchase the Equipment or Services by paying the difference between the quoted price and the correct price, as confirmed in writing by Secure Power after the manifest error has been discovered.
- (2) A 'manifest error', as the term is used in sub-paragraph (1) above, means, in relation to an incorrect price, a price quoted in error by Secure Power which is more than 10% less than the price that would have been quoted had the mistake not been made.

Compliance with relevant requirements

(1) The Client shall:

- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirement, the Relevant Policies and clause (a), and will enforce them where appropriate;
- (d) promptly report to Secure Power any request or demand for any undue financial or other advantage of any kind received by the Client in connection with the performance of this agreement;
- (e) immediately notify Secure Power if a foreign public official becomes an officer or employee of the Client or acquires a direct or indirect interest in the Client (and the Client warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);

(2) Breach of this clause shall be deemed a material breach.

(3) For the purpose of this clause, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

General

- (1) If any provision in these terms and conditions is held to be invalid or unenforceable, it shall be deemed severed from the terms and conditions and this shall not affect the validity or enforceability of the remaining provisions.
- (2) Any variation of these terms and conditions must be in writing and signed by a duly authorised Secure Power official.
- (3) Any notices given under these terms and conditions shall be in writing and sent (a) by first class pre-paid post to the last known address of the party; or (b) by fax to their last known fax number; or (c) by e-mail to the last notified e-mail address of the party.
- (4) These terms and conditions shall be governed by and construed in accordance with the laws of England & Wales and the parties submit to the non-exclusive jurisdiction of the English courts.
- (5) Secure Power may at its discretion record telephone transactions for staff training and quality control purposes.