

GREEN CONTRACT SERVICES LTD TERMS AND CONDITIONS**1.0 Definitions and Interpretations**

- 1.1 In construing the contract the following words and expressions shall have the following means.
- 1.2 **"Purchaser"** means the person named as such in the contract documents being the party for whom the contract works are carried out including the legal successors in title to the Purchaser.
- 1.3 **"GCS"** means Green Contract Services Ltd whose office is situated at Old Brickhouse 2, Congleton Road, Sandbach, Cheshire CW11 4SR.
- 1.4 The **"Project Manager"** means the person appointed by GCS to act as its representative in the capacity of project manager for the purpose of carrying out and completing the contract works.
- 1.5 **"Contract"** means the agreement between the Purchaser and GCS for the execution of the entirety of the works including the documents referred to and incorporated under clause 17. Such agreement between the parties shall come into existence on the written acknowledgment and acceptance of the Purchasers order by GCS.
- 1.6 **"The condition"** shall mean these conditions and any special conditions referred to under clause 17.
- 1.7 **"Contract price"** shall mean the sum stated in the Purchaser's order as the price payable to GCS for the scope of works described in the contract together with all further sums that may become due pursuant to these conditions herein.
- 1.8 **"Contract works"** and **"the works"** shall mean all of the works described in the contract to be provided by GCS to the Purchaser.
- 1.9 **"stage acceptance"** shall mean the certification by GCS with or without inspection by the Purchaser that the works have been carried out to the extent that it is practically possible to do so, on site.
- 1.10 **"Final acceptance"** shall mean certification by GCS for the works installed at the Purchaser's premises is fully completed in the manner required by the contract and including the performance criteria specified.

2.0 Instructions and variations

- 2.1 The contract is based upon the scope of works as defined by the Purchaser's order and the documents included in the contract by reference to clause 17. In the event of the Purchaser wishing to make any change whatsoever to the contract works or the manner or timing of the performance of the works then the Purchaser must put such instruction in writing to GCS.
- 2.2 Upon receipt of such instructions as referred to in clause 2.1 above GCS shall consider the impact and effect of the instruction upon the price and the timing of the contract works and GCS shall advise and inform the Purchaser in writing of such price and effect.
- 2.3 Upon the Purchaser's written acceptance of the impact effect and price of such an instruction then the amount of any agreed increase in respect of such instruction shall be added to the contract price and invoiced to the Purchaser as a variation addition.
- 2.4 If in the opinion of GCS such instruction from the Purchaser would be better executed after the works had been completed or, would not have the desired effect or would be impractical for some reason then in any of those events GCS will advise the Purchaser of such an opinion and such an instruction will be carried out either after the works have been completed or by others.

3.0 Assignment and sub-contracting.

- 3.1 Neither party shall assign the benefit or burden of the contract in whole or in part without the other party's permission.
- 3.2 GCS shall be entitled to sub-contract part or the whole of the works to be carried out under the contract. Where such sub-contracts are placed by GCS, GCS shall remain responsible for the acts, defaults and neglects of any sub-contractor as if they were the acts, defaults or neglect of GCS.

4.0 Basis of tender and contract price.

- 4.1 The quantity, quality, description, specification and performance of all plant and equipment to be supplied under this contract shall be set out in the GCS tender documentation based upon the requirements of the Purchaser made known to GCS at the time of tendering.
- 4.2 The Purchaser shall be responsible for the accuracy and efficiency of any and all information given to GCS for the purposes of compiling the tender.
- 4.3 Upon placing its order for the contract works the Purchaser is deemed to have satisfied itself that the contract works and performance thereof offered by GCS will be compatible with the Purchaser's requirements. The Purchaser acknowledges in placing its order with GCS that it does not rely upon any verbal or written representation, warranty or assurance given by any employee, sub-contractor or agent of GCS or any other third party save only such representations warranties or assurances that may be expressly set out and included in the GCS tender.
- 4.5 Any typographical, clerical or other error or omission in any sales or technical literature, quotation, tender, price list or other document brought into existence or procured by GCS in pursuance of the contract shall not bind GCS and shall be subject to correction without any liability on the part of GCS.
- 4.6 In the event that the contract work comprises goods, systems, methods or processes which have been manufactured and/or designed to any specification and/or design submitted by the Purchaser, the Purchaser shall indemnify and save harmless GCS against any or all claims, loss or damages, costs and expenses awarded or incurred by GCS in connection with or paid or agreed to be paid by GCS in settlement of any such claims for infringement of any patent, copyright, design (whether registered or not), trademark or other intellectual and/or intellectual

property rights asserted by any other person which arise out of the performance of GCS of the contract.

- 4.7 GCS reserves the right to make any alteration, modification or change to the contract works that in its opinion may be required so as to conform and comply with any appropriate statutory or European community requirements.
- 4.8 Unless otherwise agreed in writing, the contract price shall be payable by the Purchaser to GCS in the manner set out in these conditions. In the event of any instructions being given by the Purchaser pursuant to clause 2.0 above having the effect of increasing the contract price then such increase shall be paid as an agreed variation in the manner appearing hereunder.
- 4.9 In addition to the increase in the contract sum arising as a result of matters referred to in the preceding clause GCS reserves the right to further increase the contract sum in respect of increases brought about by:-
- (i) foreign currency exchange fluctuations in relation to plant equipment and materials procured outside of the UK.
 - (ii) alteration in the rate of tax levy or duty payable with respect to any such goods to be supplied under this contract.
 - (iii) increases in the cost of labour and/or materials promulgated after the date of GCS's acknowledgment and acceptance or order.
- (All prices quoted by GCS are net of any applicable VAT which a Purchaser will be liable to pay to GCS.)
- [4.10 The costs of any packaging materials such as pallets, crates and the like intended to be returned by the Purchaser after delivery to site will be charged to the Purchaser as an addition to the contract price but the Purchaser shall receive full credit in relation to such charges provided such materials are returned to GCS in an undamaged condition].

5.0 Purchaser's obligations.

- 5.1 The Purchaser shall provide GCS with such information that GCS may reasonably require for the performance of the contract works.
- 5.2 The purchase shall give GCS access to the site and location where the contract works are to be installed and shall provide GCS with all necessary information or allow GCS to obtain such information for itself as may be necessary for the performance of the contract works.
- 5.3 Unless otherwise agreed in writing the Purchaser shall be responsible for providing the necessary facilities for off loading and if necessary storage and protection of plant and machinery and equipment delivered to the Purchaser's premises for incorporation in the contract works.
- 5.4 Unless otherwise agreed in writing the Purchaser shall provide GCS with the following facilities at the site and/or adjacent to the contract works:-
- (i) sufficient space for the storage of plant and machinery and equipment in a lockable compound if required by GCS.
 - (ii) a secure office or porta cabin of minimum size 10' x 8' for the storage of small power tools, drawings, personal effects and the like.
 - (iii) welfare facilities including canteen, washing facilities and toilets.
 - (iv) adequate lighting for the purposes of carrying out the contract works.
 - (v) power, fuel and water supply brought to within 5 metres of the location of the works to be installed under the contract at the rate, power and pressure required for the carrying out of such works.
 - (vi) where appropriate, security passes or security cards in accordance with the Purchaser's own security provisions so as to facilitate access by GCS, its work people and sub-contractors.
 - (vii) scaffolding, ladders, hoists, safety rails and boards necessary to execute the works and the Purchaser to ensure that all such equipment conforms to current health and safety regulations and any Purchaser's health and safety regulations.
 - (viii) any Purchaser's health and safety regulations.
- 5.5 Unless otherwise agreed in writing the Purchaser shall allow GCS personnel to work at the Purchaser's premises so as to carry out the contract works between the hours of 8.00am to 5.30pm weekdays and 8.00am to 2.00pm on Saturdays. These hours shall be regarded as standard hours of work available to GCS and any hours over and above these shall be made the subject of special agreement and arrangement between GCS and the Purchaser.
- 5.6 Unless otherwise agreed in writing the Purchaser shall provide free of charge such fuel, electricity, water, , materials, apparatus and instruments as may be required by GCS to enable GCS to carry out the contract works].
- 5.7 The Purchaser shall supply to GCS all information that shall be reasonably required by GCS and such information shall be provided not later than two weeks from the date upon which the Purchaser places its order with GCS.
- 5.8 The Purchaser shall nominate a representative to act on its behalf and all communications between the parties shall be conducted through such representative and GCS project manager.

6.0 GCS Obligations.

- 6.1 GCS shall, subject to the provisions of the contract, with due care and diligence, [design] manufacture and deliver to the Purchaser's premises, install and erect, the works within the period set out in the tender.
- 6.2 The works shall be executed in the manner set out in the tender and where not so set out to the reasonable satisfaction of the Purchaser.
- 6.3 The programme and timing of the works shall be set out in the tender. In the event of any disruption, intervention or event which gives rise and results in delay of the performance of the works GCS shall not be liable to the Purchaser where such events arise as a result of circumstances beyond the reasonable control of GCS.

- 6.4 Where the Purchaser is responsible for the prevention, suspension or event which causes delay to the performance of the contract works then the Purchaser shall indemnify GCS in respect of all and any loss damage and/or expense arising and such loss damage and/or expense shall be payable by the Purchaser to GCS in addition to the contract price.
- 6.5 GCS shall be responsible for the removal from the Purchaser's premises of any and all waste materials and rubbish produced as a result of its performance of the contract works and shall ensure the clearance of all such materials before vacating site.
- 6.6 GCS shall be responsible for the adequacy, stability and the safety of its operations on site and shall comply with all statutory regulations concerning safety and all other special safety requirements made known to it by the Purchaser].
- 7.0 Acceptance.**
- 7.1 Unless otherwise agreed in writing GCS shall perform the work in stages and once GCS has completed the contract works at the Purchaser's premises it shall give to the Purchaser 7 days notice of the date and time upon which the final inspection shall be carried out.
- If the Purchaser fails to attend the inspection referred to above then GCS shall be entitled to proceed in any event in the absence of the Purchaser and the final inspection shall be deemed to have been made in the presence of the Purchaser. In such an event GCS shall forward to the Purchaser copies of the results of such inspection.
- With the contract works having achieved the goals set out in the contract documents then GCS shall issue a certificate to that effect which shall constitute the completion of contract works as having been satisfactorily performed.
- 7.4 If any part of the works fail to pass the final inspection as described above then such inspection shall be repeated after the failed works have been remedied in accordance with the above provisions.
- 8.0 Modifications and alterations (including instructions that require variations considered by GCS as practical to carry out after completion of the installation).**
- 8.1 In the event of the Purchaser issuing an instruction during the course of the works pursuant to clause 2 above and if in the opinion of GCS such instruction is better effected after completion or once the final inspection has been carried out then such modification alteration or variation of the works as required by the Purchaser shall be carried out provided the parties reach an agreement upon GCS's costs of carrying out such an instruction and such amounts in respect of such instructions shall be paid in the manner provided hereafter.
- 9.0 Taking over.**
- 9.1 Once the final inspection has been satisfactorily carried out and the works satisfactory completed and subject to satisfactory completion of any remediation or modifications and alterations (save only for minor matters that do not affect the use for the purpose intended) then the contract will at that stage be deemed to be complete and GCS shall issue to the Purchaser a Certification of Taking Over.
- 9.2 The Certificate of Taking Over shall identify any outstanding work to be attended to and GCS shall attend to and rectify and complete any such work to the reasonable satisfaction of the Purchaser and within the time stated for the completion of such work in the Taking Over Certificate.
- [9.3 Upon the date of issue of the Taking Over Certificate any risk of loss and/or damage in respect of the contract works and all liability therefor shall pass to the Purchaser and the Purchaser shall take possession thereof].
- 10.0 Payment**
- 10.1 Unless otherwise agreed in writing, payments to be made by the Purchaser to GCS shall comprise the following sums:-
- (i) The contract price (clause 1.7)
 - (ii) The agreed price of instructions causing a variation that GCS are prepared to incorporate prior to installation of the works (clause 2.3)
 - (iii) Loss damage and/or expense arising as a result of third party claims (clause 4.5)
 - (iv) Cost of compliance with any appropriate regulations (clause 4.6)
 - (v) Additional sums arising as a result of a change in rates, duties, levies etc. (clause 4.8)
 - (vi) Cost of returnables not returned (clause 4.9)
 - (vii) Loss damage and/or expense arising as a result of prevention/suspension/delay to the performance of the works (clause 6.3)
 - (viii) The price of instructions giving rise to variations, modifications or alterations which by the agreement of GCS are to be carried out after installation (clause 8.3).
 - (ix) all payments by the Purchaser shall be made to GCS without deduction of any tax. GCS operates under C.I.S 6 certificate.
- 10.2 GCS shall invoice the Purchaser in respect of those sums due under 10.1(i) above as follows:
- []% upon the Purchaser's placement of order (i.e. such sum to be included with the order)
 - stage payment sum invoiced from time to time
 - [10%] upon GCS certifying final acceptance
- 10.3 GCS shall invoice the Purchaser in respect of those sums due under 10.1(ii), 10.1(vi), 10.1(viii) and payment will be due 30 days following the date of the invoice in respect of such sums.
- 10.4 GCS shall forward to the Purchaser its claims in respect of payments required pursuant to 10.1(iii), 10.1(vii) and 10.1(iv) and unless objection is made thereto within 14 days of such charges having been sent to the Purchaser then payment of such monies under these headings shall become immediately due.
- 11.0 Insurances.**
- 11.1 Purchaser and GCS shall each prior to the commencement of any work at the Purchaser's premises pursuant to the contract insure in an amount of not less than [£3 million] against liability for damage, death or personal injury occurring before all the works have been taken over by the Purchaser or the Purchaser has taken possession thereof whichever is the sooner.
- 11.2 GCS warrants that it shall maintain public and employers liability insurance cover of £10 million.
- 12.0 Defects liability and maintenance.**
- 12.1 GCS shall be responsible for making good by repair or replacement any defect or damage to any part of the works which may appear or occur during a period of [six months] following the date of the Taking Over Certificate or the Purchaser taking possession whichever is the sooner and which defect or damage arises:-
- (i) from any defective material workmanship or design furnished by GCS or
 - (ii) from any act or omission of GCS
- 12.2 GCS's obligations under clause 12.1 above shall not apply to any defect or damage arising as a result of materials, plant or design furnished or specified by the Purchaser.
- 12.3 GCS shall carry out such maintenance in such manner and in such times as the parties have agreed upon and incorporated into the tender and purchase order.
- 13.0 Limitation of liability.**
- 13.1 GCS shall not be liable to the Purchaser by way of indemnity or by reason of any breach of contract or of statutory duty or by reason of tort (including but not limited to the tort of negligence) for any loss of profit, loss of use, loss of production, loss of contracts or for any financial or economic loss or for any indirect or consequential damage whatsoever that may be suffered by the Purchaser.
- 13.2 In no circumstances whatsoever save only where the liability is one covered by GCS's insurers as set out above, shall the liability of GCS to the Purchaser under these conditions exceed [10%] of the contract price.
- 14.0 Insolvency or default of Purchaser.**
- 14.1 In the event of the Purchaser:-
- (iii) failing to pay GCS the amount due under any invoice within 30 days of its issue to the Purchaser or
 - (iv) interfering or obstructing or preventing the progress of the works such as to render the performance by GCS of its obligations more onerous in respect of which the parties are unable to agree compensation or
 - (v) ceases or threatens to cease to carry out its business or
 - (vi) becomes bankrupt or makes a composition or arrangement with his creditors or being a limited company has a Petition issued for the Insolvency of that company or goes into liquidation or carries out its business under an Administrator, Receiver, Manager or Liquidator or enters into a scheme or arrangement for the benefit of its creditors or any of them then
- GCS shall be entitled without prejudice to any other right or remedy under the contract to determine its employment under the contract and shall not be further obliged to perform the same any further. Without any liability to the Purchaser GCS shall be entitled to suspend or cancel all and any further deliveries of plant machinery or equipment not already installed at the Purchaser's premises and all monies due but not paid by the Purchaser to GCS shall notwithstanding any provisions to the contrary contained in these contract conditions, shall become immediately due and payable to GCS.
- 15.0 Disputes - Arbitration.**
- 15.1 **Arbitration.**
If at any time any question, dispute or difference shall arise between the Purchaser and GCS in relation to the contract or in any way connected with the works which cannot be settled amicably then either party shall as soon as reasonably practicable give to the other notice of the existence of such question, dispute or difference specifying its nature and the point at issue and the same shall be referred to the Arbitration of a person to be agreed upon. Failing agreement upon such a person within 21 days after the date of such notice, the Arbitration shall be conducted by some person on the application of either party by the President of the Chartered Institute of Arbitrators and such Arbitration will proceed in accordance with the Arbitration Act, 1996.
- 16.0 Law.**
- 16.1 This contract shall in all respects be governed by and interpreted in accordance with the Laws of England.
- 17.0 Contract Documents.**
- 17.1 The following documents shall be incorporated into and form part of this contract:-
- (x) GCS's tender
 - (xi) The Purchaser's order
 - (xii) GCS's acknowledgment and acceptance of order
 - (xiii) Drawings referred to in GCS's tender
 - (xiii) Special conditions if any (to the extent not incorporated into GCS's tender)