

Terms and conditions – INECO Energy Limited

Please find set out below the terms and conditions (**Terms**) upon which INECO Energy Limited (**we/us/our**) will supply energy solutions to you. Please read these terms carefully. They will apply to any contract made between us to the exclusion of any other terms you may seek to impose or incorporate or which are implied by trade, law, custom, practice or course of dealing. Should you have any queries in relation to any matter set out in these Terms, please do not hesitate to contact us and we will seek to clarify the matter of concern.

1. About us

- 1.1. We are a limited company registered in England and Wales under company number 10477244 and have our registered office at 4 Bessemer Road, Cardiff CF11 8BA. Our VAT number is 25601375.
- 1.2. You can contact us by telephoning us on 029 2002 1777 or by e-mailing us at info@inecoenergy.com.
- 1.3. If you wish to contact us in writing, or if any clause in these Terms requires you to give us notice in writing, you can send this to us by e-mail, by hand, or by pre-paid post to our trading address set out above. We will confirm receipt of this by contacting you in writing. If we have to contact you or give you notice in writing, we will do so by e-mail, by hand, or by pre-paid post to the address you initially provide to us.

2. Defined Terms

- 2.1. In these Terms the following terms shall have the following meaning: -

Acceptance: signed written acceptance of our Proposal

Charges: means the charges payable by you for the Works.

Contract: this contract made between you and us for the carrying out of the Works upon the Terms.

Goods, Equipment and Materials: means the goods, equipment and materials which INECO is to supply and install in accordance with these Terms.

Hazardous Materials: means any substance or material which could adversely affect the health & safety of the public or the environment, including but not limited to, asbestos, polychlorinated biphenyls (PCB) and contaminated oil, amongst others.

Installed Equipment: the equipment specified in the Proposal to be supplied and incorporated into the Works.

Manufacturer: means the manufacturer of the goods which we supply in accordance with these Terms.

Our Property: our equipment, tooling, materials and such other property as may be required in the carrying out of the Works.

Premises: means the premises specified in the Proposal where the Works will be carried out.

Proposal: means the written proposal prepared by us in accordance with clause 3.1 setting out the specification, description and charges for the works.

Variation Order: means any changes to the works requested by you or required under 5.8.

Works: means the works to be carried out by us at the Premises as detailed in the Proposal.

You: means you the customer for whom we will carry out the Works, further details of which are set out in the Proposal.

3. **Our Contract**

- 3.1. The Works shall be carried out in accordance with this Contract.
- 3.2. Our Proposal sets out the requirements and specification of the Works, our Charges and any other information we deem necessary. If there is any inconsistency between these Terms and the Proposal, these Terms shall prevail.
- 3.3. Before we commence the provision of the Works we will require you to provide us with a signed Acceptance. We will not commence the Works until we receive the signed Acceptance. We further reserve the right to request a purchase order from you before we commence the Works.
- 3.4. Unless otherwise agreed, our Proposal remains valid for 60 days from the date of issue only.
- 3.5. It is important that you consider the contents of the Proposal carefully as the Works will be carried out in accordance with the Proposal. You are responsible for notifying us if you think there is a mistake or require any changes to it. We will confirm any changes in writing to avoid any confusion between us.

4. Funding

- 4.1. You may be entitled to access funding for the carrying out of the Works. Should you be entitled to do so we will upon your instruction prepare the application on your behalf. You will provide us with such information as we require to prepare the application. All such information must be true, accurate and complete. You will reimburse us any costs and expenses we incur should you fail to comply with this obligation.
- 4.2. If you are entitled to funding for the Works, we will not commence the Works until confirmation of funding has been obtained and all relevant and associated funding documentation has been completed.

5. The Works

- 5.1. We will carry out the Works in accordance with the Proposal using reasonable skill and care.
- 5.2. We will commence the Works on an agreed date and will confirm that in writing to you. Should you need to change any date on which the Works are to commence or thereafter be performed you are required to give us not less than 10 working days written notice. Should you fail to give us 10 working days written notice you will be liable to pay all costs and expenses we incur as a consequence of such failure. We will use all reasonable endeavours to accommodate your change provided that you reimburse us all costs and expense (including, but not limited to, all labour costs, cost of materials and hire of plant and machinery costs) we incur as a consequence of the change in dates for performance of the Works.
- 5.3. The Works will be carried out at the Premises.
- 5.4. We will use all reasonable endeavours to meet any performance dates set out in the Proposal but such dates are estimates only and time shall not be of the essence for the performance of the Works.
- 5.5. We reserve the right to make any minor changes to the Works which are necessary to comply with any applicable laws or safety requirements or which do not materially affect the nature or quality of the Works. We will notify you of such changes.

- 5.6. We will be responsible for health and safety requirements which reasonably relate to the Works. We will observe all reasonable health and safety rules and regulations and security requirements that apply at the Premises and which have been communicated to us.
- 5.7. We will comply in all material respects with applicable legislation and regulation relating to the Works.
- 5.8. Where we have not carried out an intrusive survey - and subsequently identify electrical remediation work not comprised in the Works is required, we will issue you with a Variation Order setting out as a minimum the location, a description of the requirement and the cost of remediation. Each Variation Order will be classified as follows: -
- VO 1 – identified at pre-installation;
 - VO 2 – identified at installation.

Each Variation Order will be categorised as C1 (essential), C2 (recommended) or C3 (optional). You are not obliged to accept a Variation Order classified as C2 or C3. A Variation Order classified as C1 will only cover remedial works essential to make the Premises safe for us to carry on the Works. A Variation Order must be accepted or rejected within the timescale set out in the Variation Order. We will not be liable for any delay in the Works should you fail to respond within the timescale. You will further reimburse us for any costs and expenses we incur because of your failure to comply with this clause 5.8. Should you reject a Variation Order classified as C1 we reserve the right to terminate this contract with immediate effect.

- 5.9. Unless otherwise stated in the Proposal, we will not be responsible for any building works, including but not limited to boring of holes in excess of 24 mm diameter to accommodate cables, pipes and products and structural reinforcements required to support and accommodate the Works.
- 5.10. Unless otherwise stated within the Proposal, we will not be responsible for making good of decorative finishes including but not limited to redecoration, wall papering, painting, filling holes and any other decorative damage arising from the works.

6. Your obligations

6.1. To enable us to perform our obligations under the Contract you will:-

- 6.1.1. cooperate with us in all matters relating to the provision of the Works;
- 6.1.2. provide us with clear, timely and accurate instructions;
- 6.1.3. comply with our reasonable instructions including but not limited to any health and safety requirements we communicate to you;
- 6.1.4. provide us with such information and documentation as we may reasonably require and ensure such information is accurate and complete in all material respects;
- 6.1.5. promptly notify us of any inaccuracies in any information supplied by you and supply us with the correct information;
- 6.1.6. allow us and our subcontractors unrestricted access to the Premises to the extent required to perform our obligations under the Contract;
- 6.1.7. ensure that all electrical supplies and electrical circuitry conform to required standards and that you have a current Electrical Installation Condition Report (**EICR**) which is held at the Premises. You shall provide us with a copy of the EICR on request.
- 6.1.8. ensure that all utilities supplied to the Premises are sufficient to enable us to perform the Works. For the avoidance of doubt, we shall not be responsible for any additional costs associated with upgrading or altering your utility supplies.
- 6.1.9. agree the position of all points and equipment to be installed as part of the Works prior to commencement of the Works.
- 6.1.10. undertake such preparatory works to the Premises required under the Proposal.
- 6.1.11. save to the extent incorporated into the Works, be responsible for the removal of any Hazardous Substances which may exist in the Premises. If Hazardous Substances are discovered by us in the carrying out of the Works, we will notify you. The Works may be suspended pending the removal of such substances.

- 6.1.12. unless we have agreed to obtain the same on your behalf, you will be responsible for obtaining all necessary approvals, licences, consents or permissions to enable us to perform our obligations and you will comply at all times with such approvals, licences, consents or permissions.
- 6.1.13. respond to any Variation Order requirements and accept or reject within the required timescales.
- 6.1.14. provide us with access to water, electricity, toilets, storage facilities and such other facilities as we may reasonably require.
- 6.1.15. not ask our employees or sub-contractors to carry out any works on the Premises other than the Works. Should you fail to comply with this obligation, we shall not be liable for any works carried out by such employee or sub-contractor.
- 6.2. If you engage any contractors to carry out any part of the Works or any additional works required you shall be responsible for all works carried out by such contractors. We shall have no liability in respect of any such works, any damage to the Premises or any delays in the Works caused by such contractors.
- 6.3. Unless otherwise agreed, you will permit us to locate a storage container on the Premises in which we may store Our Property as may be required in the carrying out of the Works. Where a storage container is sited on your Premises we shall be responsible for the safe storage of Our Property.
- 6.4. If we agree that Our Property is to be stored on the Premises other than in a storage container, you will be responsible for the safe and secure storage of Our Property and all risk shall pass to you.
- 6.5. Please note that if you fail to comply with your obligations under these Terms or our carrying out of the Works is delayed or prevented by an act or omission on your part (or that of your officers, employees, agents or contractors) (**Default**):-
 - 6.5.1. we may, without limiting our other rights and remedies, suspend performance of the Works until the Default is remedied;
 - 6.5.2. we will not be liable for any costs, charges or losses you incur or sustain;

6.5.3. you shall reimburse us on written request for any costs or losses we sustain or incur arising from your Default.

7. Our Charges

- 7.1. Our Charges for carrying out the Works are set out in the Proposal.
- 7.2. Our Charges are exclusive of VAT which will be added at the rate applicable at the time.
- 7.3. Our payment terms are set out in the Proposal. If no payment terms are stated in the Proposal or otherwise agreed in writing payment of our Charges must be made within 30 days of the date of our invoice. Any query in relation to our invoice must be raised within 5 days of the date of our invoice otherwise our invoice shall be deemed accepted by you.
- 7.4. Unless otherwise agreed in writing with you, we reserve the right, by giving notice to you at any time before delivery, to increase the price of the Works to reflect any increase in the cost to us which is due to any factor beyond our control (such as, without limitation, any foreign exchange fluctuation, currency regulation, legislation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture). If you do not accept the price increase you may terminate this Contract. If you terminate the Contract you will be liable to pay for Works carried out up to the date of termination.
- 7.5. Payment by you of all sums due shall be made in full without deduction, set off or counterclaim.
- 7.6. If you do not make any payment due to us by the due date for payment we may (without affecting any of our other rights and remedies):-
 - 7.6.1. suspend the Works with immediate effect until you have paid us the outstanding amount; and/or
 - 7.6.2. charge interest to you on the overdue amount at the rate of 3% a year above the base rate of Lloyds Bank Plc from time to time. This interest shall accrue on a daily basis from the due date until the actual payment of the overdue amount, whether before or after judgement. You must pay us interest together with any overdue amount.

- 7.7. Save as provided in clause 6.4, risk in any goods and materials supplied will pass to you on completed installation of the individual goods and materials, not at full completion of the Works. Title in such goods and materials will not pass until you have paid our Charges. If before title passes you become subject to an event set out in clauses 11.1.2 to 11.1.10 we may require you to deliver up the goods or materials or should you fail to do so we may enter the Premises or any other premises at which the goods and materials are stored in order to recover the same.
- 7.8. On occasions we may engage the services of a debt collection agency to collect overdue amounts owed to us. You agree that we may pass your details to such agency for the purpose of collecting in the monies owed to us by you. Should it be necessary for us to engage the services of a debt collection agency to collect monies owed by you to us, you will be liable to pay any costs we may incur with such agency.

8. **Changes to supply**

- 8.1. If you require a change to the Works, please provide us with details of the requested change in writing. Upon receipt of your request, we will assess the requested change and advise you of any impact of the proposed changes upon any agreed timescales, any necessary variations to our Charges and any other impact upon these Terms. These changes will be presented in a Variation Order. No change will be implemented until such time as you and we have agreed the necessary changes and any additional Charges payable.

9. **Intellectual Property Rights**

- 9.1. Unless otherwise agreed, all patents, rights to invention, copyright, design rights or any other intellectual property rights (**IPR**) in or arising out of carrying out of the Works by us (including but not limited to the Proposal, design and the initial pre-installation survey) shall belong to us.
- 9.2. Subject to payment of our Charges, we will grant you a non-exclusive licence to use such IPR for the purpose of receiving the benefit of the Works.

10. Limitations on our liability to you

10.1. The following provisions set out our entire financial liability to you (including without limitation any liability for the acts or omissions of our employees, agents and sub-Contractors in respect of:-

10.1.1. any breach of Contract howsoever arising; and

10.1.2. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising out of or in connection with this Contract.

10.2. You acknowledge that the performance of the Installed Equipment is impossible to predict with certainty due to the variability in day to day operating hours, temperature fluctuations, variability in the electrical supply and variation from year to year. Estimates provided by us are based on the specification of the Installed Equipment, the specification of the equipment being replaced, standard operating hours, price of utilities and be monitored and verified by third party monitoring equipment. No warranty is therefore given regarding the performance of the Installed Equipment.

10.3. We will make good any damage to the Premises caused by our negligence in carrying out the Works. However, we shall not be responsible for repairing any pre-existing faults or damage to the Premises that we discover in the course of carrying out the Works.

10.4. If within 12 months from the date the Works are completed, a defect in the Works occurs due to our workmanship we will put the defect right at no cost to you provided that you notify us of the defect within 10 days of the defect occurring and you permit us to undertake a full examination of the defect. We will not be responsible for any defect which:-

10.4.1. is caused by any fault which existed prior to commencement of the Works;

10.4.2. is caused by fair wear and tear, improper use, neglect, accident, vandalism, or other failure to operate and maintain the Installed Equipment;

10.4.3. is caused by any failure on your part to comply with our reasonable instructions;

10.4.4. arises out of a failure on your part to follow our advice regarding the suitability of any material or a particular part of the Work.

- 10.5. Where in carrying out the Works we supply goods and materials supplied by third parties, we will use all reasonable endeavours to assign to you the benefit of the Manufacturer's warranty and until such time as the benefit of the Manufacturer's warranties can be assigned we will use all reasonable endeavours to provide you with the benefit of such warranties.
- 10.6. All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 10.7. We do not exclude or limit in any way our liability under this Contract for:
- 10.7.1. death or personal injury caused by our negligence or the negligence of our employees, agents or sub-contractors;
 - 10.7.2. fraud or fraudulent misrepresentation;
 - 10.7.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 and by section 2 of the Supply of Goods and Works Act 1982 (title and quiet possession); and
 - 10.7.4. in any other circumstances where it would be deemed unlawful for us to limit or exclude our liability in any way.
- 10.8. We shall under no circumstances whatever be liable to you, whether in Contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract.
- 10.9. Our total liability to you in respect of all losses arising under or in connection with this Contract whether in Contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed the Charges.

11. Termination

- 11.1. Without limiting its other rights or remedies, each party may terminate this Contract with immediate effect by giving written notice to the other party if:
- 11.1.1. the other party commits a breach of this Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;

- 11.1.2. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 11.1.3. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 11.1.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 11.1.5. the other party (being an individual) is the subject of a bankruptcy petition or order;
- 11.1.6. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 11.1.7. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 11.1.8. a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

11.1.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

11.1.10. any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs 10.1.2 to 10.1.9 (inclusive);

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

11.2. Without limiting our other rights or remedies, we may terminate this Contract with immediate effect by giving written notice to you if you fail to pay any amount due under this Contract on the due date for payment.

12. Effect of Termination

12.1. Termination of this Contract shall be without prejudice to any rights or liabilities which have accrued at the date of termination.

12.2. On termination of this Contract, you will immediately pay all outstanding unpaid invoices and interest and in respect of Works carried out, but for which no invoice has been raised (including but not limited to materials ordered for incorporation into and plant and equipment required to undertake the Works) we shall submit an invoice for all charges then due which you will pay immediately upon receipt.

13. Events outside our control

13.1. We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by an Event Outside Our Control.

13.2. An Event Outside Our Control means any act or event beyond our reasonable control, including without limitation planning restriction, legislative changes, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, adverse weather conditions, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications network Works.

13.3. If an Event Outside Our Control takes place that affects the performance of our obligations under these Terms:

13.3.1. we will contact you as soon as reasonably possible to notify you; and

13.3.2. our obligations under these Terms will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. We will restart the Works as soon as reasonably possible after the Event Outside Our Control is over.

13.4. If an Event Outside Our Control prevents us from commencing or restarting the Works within 3 months of the date of suspension, we reserve the right to review the Charges and to revise the same to take account of any increased costs in respect of the Works. We will advise you of any increased costs. Should you not agree to the increased costs, you may terminate the Contract and clause 11.2 shall apply.

14. **Confidentiality**

14.1. A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This term shall survive termination of the Contract.

15. Multi-tiered dispute resolution

15.1. If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the following procedure:

15.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, each party's respective contracts manager shall attempt in good faith to resolve the Dispute;

15.1.2. if the contract managers are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the Chief Executive of each party who shall attempt in good faith to resolve it; and

15.1.3. if the Chief Executives are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 14 days after the date of the ADR notice.

15.2. No party may commence any court proceedings under clause 16.8 in relation to the whole or part of the Dispute until 40 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

15.3. If the Dispute is not resolved within 40 days after service of the ADR notice or either party fails to participate or ceases to participate in the mediation before the expiry of that 14 day period the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 16.8.

16. Other important terms

16.1. This Contract constitutes the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise, assurance, representation,

assurance or warranty made or given by or on behalf of us which is not set out in the Contract.

- 16.2. We may transfer or subcontract our rights and obligations under these Terms to another person or organisation, but this will not affect your rights or our obligations under these Terms.
- 16.3. Save as permitted under these Terms, no variation to these terms shall be valid unless agreed in writing by us.
- 16.4. You may only transfer your rights or your obligations under these Terms to another person if we agree in writing.
- 16.5. This Contract is between you and us. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties Act) 1999 or otherwise.
- 16.6. Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
- 16.7. If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 16.8. This Contract is governed by English and Welsh law. You and we both agree that the courts of England and Wales will have non-exclusive jurisdiction.