



YOUR FACILITIES MANAGEMENT PARTNER

DARWEN ELECTRICAL SERVICES LTD - GENERAL TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES INCLUDING REPAIR AND MAINTENANCE OF PLANT AND EQUIPMENT – APRIL 2024 edition

1. INTERPRETATION

1.1 In these Terms:

"Darwen Electrical Services Ltd"	means Darwen Electrical Services Ltd (registered in England and Wales) or any of its sub-contractors, for the time being appointed by the Customer to carry out and complete the Services;
"Contract"	means the contract for the supply and acquisition of the Services;
"CDM Regulations"	means the Construction (Design & Management) Regulations 2015, and includes any Approved Code of Practice and any guidance requirements issued by the Health & Safety Executive including any revisions current at the time the Services are provided;
"Confirmation of Order"	means the confirmation of order provided by Darwen Electrical Services Ltd to the Customer;
"Customer"	means the person so described in the Confirmation of Order;
"Delivery Address"	means the address stated on the Confirmation of Order;
"Goods"	means the goods (including any instalment of the goods or any part of them and any replacement parts supplied as part of the Services) described in the Confirmation of Order
"Plant and Equipment"	means machinery, apparatus, materials, articles and things of all kind used by the Customer as part of its business or operational process;
"Price"	means the price for the Services;
"Services"	means the services described in the Confirmation of Order to be provided by Darwen Electrical Services Ltd pursuant to these Terms, and those matters reasonably ancillary to them, and as may be amended from time to time in accordance with these Terms;
"Terms"	means the standard terms and conditions of supply set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Management Contractor and the Customer;
"Third Party"	means any person who is not a party to this Contract;

1.2 Any reference in these Terms to a statute or a provision of statute will be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2. FORMATION OF CONTRACT

- 2.1 All Services are offered, and all contracts are entered into subject to these Terms. All other terms, conditions or warranties whatsoever are excluded from the Contract or any variation thereof unless accepted by Darwen Electrical Services Ltd in writing.
- 2.2 These Terms will be incorporated into the Contract between Darwen Electrical Services Ltd and the Customer to the exclusion of any terms or conditions stipulated or referred to by the Customer. Any dealings with Darwen Electrical Services Ltd following receipt by the Customer of notice of these Terms will automatically be deemed acceptance thereof and the basis for all future contracts unless expressly otherwise stated in writing.
- 2.3 The Customer's order is not accepted by Darwen Electrical Services Ltd until Darwen Electrical Services Ltd provides the Customer with a Confirmation of Order or (if earlier) Darwen Electrical Services Ltd provides the Services to the Customer. If Darwen Electrical Services Ltd provides a quotation for the Services there will not be a Contract until Darwen Electrical Services Ltd provides a Confirmation of Order or the Services are provided. Any quotation shall remain valid for 30 days unless otherwise specified.

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- 2.4 The Confirmation of Order cannot be cancelled or varied after being accepted by Darwen Electrical Services Ltd except with its written consent and the agreement of the Customer to pay all the costs incurred by Darwen Electrical Services Ltd in connection with the cancellation or variation.
- 2.5 The Services are those listed in the Confirmation of Order. The Customer shall check the Services are correct upon receipt of the Confirmation of Order. Darwen Electrical Services Ltd shall not be liable to the Customer for any resulting losses if the Customer fails to notify Darwen Electrical Services Ltd of any inaccuracies or omissions in the Confirmation of Order.

3. CUSTOMER'S OBLIGATIONS

The Customer shall provide Darwen Electrical Services Ltd and its appointed employees, agents and/or subcontractors with adequate advice and guidance on the use and operation of the Plant and Equipment sufficient to enable Darwen Electrical Services Ltd to perform the Services.

- 3.1 The Customer shall provide such reasonable access to its premises and facilities as Darwen Electrical Services Ltd may require for the provision of the Services and shall grant Darwen Electrical Services Ltd and its employees, agents and/or subcontractors permission to use the Customer's welfare facilities.
- 3.2 The Customer shall be responsible for ensuring that the operational and environmental conditions in and around the Plant and Equipment or area of work are such that they do not present any risk by Darwen Electrical Services Ltd and its employee, agents and/or subcontractors.
- 3.3 The Customer shall provide Darwen Electrical Services Ltd and its employees, agents and/or subcontractors with the relevant Health and Safety policy.
- 3.4 The Customer shall observe and comply with any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Services and any regulation or byelaw of any local authority or statutory undertaker which has any jurisdiction with regard to the Services or with whose system the Plant and Equipment are, or are to be, connected.

4. PERFORMANCE AND DELIVERY

- 4.1 Darwen Electrical Services Ltd will perform the Services using reasonable skill and care and in accordance with these Terms.
- 4.2 All times quoted for performance will not be of the essence and are not guaranteed. The Customer will have no right to damages or to cancel the Confirmation of Order for failure by Darwen Electrical Services Ltd for any cause to meet any performance time stated.
- 4.3 Performance of the Contract will proceed upon provision of the Confirmation of Order by Darwen Electrical Services Ltd but will in every case be dependent upon final instructions and approvals by the Customer to Darwen Electrical Services Ltd.
- 4.4 Where performance is postponed otherwise than due to default by Darwen Electrical Services Ltd the Customer will pay all costs, expenses and all necessary work undertaken by Darwen Electrical Services Ltd incurred in connection with the delay. Payment for the Services will be made in accordance with these Terms.
- 4.5 Darwen Electrical Services Ltd may postpone or cancel performance either in whole or in part pending payment of any sum not paid in accordance with these Terms and due from the Customer to Darwen Electrical Services Ltd either under the Contract or any other contract between Darwen Electrical Services Ltd and the Customer, but without prejudice to any other rights or remedies which Darwen Electrical Services Ltd may have against the Customer.

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5. PRICE

- 5.1 The Price of the Services shall be as stated in the Confirmation of Order unless otherwise stated and is subject to fluctuation at the Darwen Electrical Services Ltd sole discretion in the event of any increase in the cost of labour, materials, overheads, transport, taxes, duties or any other costs whatsoever affecting the performance of the Services and any fluctuations in exchange rates affecting prices quoted other than in sterling. Any increase in such costs during the period of the Contract will be added to the Price.
- 5.2 In the event of any variation to the Confirmation of Order being requested by the Customer and agreed by Darwen Electrical Services Ltd, Darwen Electrical Services Ltd will be entitled to make an adjustment of the Price corresponding to such variation.
- 5.3 Darwen Electrical Services Ltd will be entitled to make an adjustment to the Price in the event that the Customer fails to:
- 5.3.1 provide sufficient information to enable work to commence forthwith;
 - 5.3.2 provide a full and accurate description of the work involved; or
 - 5.3.3 delay is caused by the Customer's instructions or lack of instructions.
- 5.4 Where the Price includes the whole or part of the cost of any tooling the Customer acknowledges that unencumbered and exclusive title in such tooling will have vested in Darwen Electrical Services Ltd and that the Customer has no claim to or rights therein.

6. TERMS OF PAYMENT

- 6.1 Darwen Electrical Services Ltd will be entitled to submit its invoice on the substantial performance of the Services save that where performance has been postponed at the request or by the default of the Customer then Darwen Electrical Services Ltd may submit its invoice for all Services performed up to that date without prejudice to any other right or remedy of Darwen Electrical Services Ltd.
- 6.2 Unless otherwise agreed by Darwen Electrical Services Ltd in writing the Customer will pay the Price or part thereof within 30 days of the date of Darwen Electrical Services Ltd invoice notwithstanding that delivery may not have taken place.
- 6.3 All payments made to Darwen Electrical Services Ltd must be in sterling (unless another currency has been otherwise agreed) at the address shown on Darwen Electrical Services Ltd invoice or direct to Darwen Electrical Services Ltd bank account. Payment will not have been received by Darwen Electrical Services Ltd until the full amount is credited to Darwen Electrical Services Ltd bank account.
- 6.4 The Customer will pay all amounts owing to Darwen Electrical Services Ltd in full and will not exercise any rights of set off or counterclaim against invoices submitted.
- 6.5 In the event of default in payment by the Customer Darwen Electrical Services Ltd will be entitled without prejudice to any other right or remedy to charge the Customer interest (on a daily basis) on the amount unpaid, at the rate of 4% per annum above the base rate of the Bank of England from time to time.

7. QUALITY

- 7.1 The Customer will have no claim that the quality of the Services falls below a reasonable standard unless:
- 7.1.1 the Customer provides written notice within 24 hours from the performance of the Services; or
 - 7.1.2 where a defect or failure would not be apparent on an initial thorough and proper inspection within 2 days after discovery of the defect or failure.
- 7.2 Time shall be of the essence for this clause 7.
- 7.3 If the Customer fails to give written notice, the Customer shall not be entitled to request Darwen Electrical Services Ltd to cease performing or remedy or make good in respect of the Services. Darwen Electrical Services Ltd shall have no liability for such defect or failure and the Customer must pay the Price to Darwen Electrical Services Ltd.
- 7.4 Subject to compliance by the Customer with the requirements of clause 7, Darwen Electrical Services Ltd will at its option be entitled to refund the Customer the Price or a proportionate part of the Price or re-perform the Services. If Darwen Electrical Services Ltd does so the Customer will be bound to accept the refund or re-performance of the Services and Darwen Electrical Services Ltd will be under no further liability.
- 7.5 The Customer cannot reject the Services without giving Darwen Electrical Services Ltd a reasonable time and opportunity to rectify any defects in the Services. If Darwen Electrical Services Ltd rectifies the defects in the Services they shall be deemed to be in all respects in accordance with the Contract. If the Customer does become entitled to reject the Services Darwen Electrical Services Ltd will repay to the Customer any sums paid by the Customer in respect thereof but will be under no further liability in respect of its failure to perform or the consequences thereof. The Customer will in any event have no right to reject the Services, or any part of them, on account of minor omissions which do not materially affect the Services provided.

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8. WARRANTIES AND GUARANTEE

- 8.1 Darwen Electrical Services Ltd warrants that the Goods will comply with any specification specifically agreed by the Management Contractor in writing. All other terms, warranties or conditions as to quality, description, fitness for purpose or otherwise (whether express or implied, statutory or otherwise) are excluded to the fullest extent permitted by law save as set out in clauses 8.2 and 8.3.
- 8.2 Darwen Electrical Services Ltd gives no guarantee and the Customer will not be entitled to any claim in respect of any repairs or alterations undertaken by the Customer without the prior specific written consent of Darwen Electrical Services Ltd nor in respect of any defect arising by reason of fair wear and tear or damage due to accident, neglect or misuse nor in respect of the performance of the Services to the Customer's specification.
- 8.3 All information and details contained in Darwen Electrical Services Ltd advertising, sales and technical literature are provided for guidance only and their accuracy is not guaranteed. No such data or information will form part of the Contract and Darwen Electrical Services Ltd will not in any event be liable for any inaccuracies or omissions.

9. LIMITATION OF LIABILITY

- 9.1 Darwen Electrical Services Ltd will not be liable for economic loss including without limitation loss of profits, contribution to overheads, business opportunities, loss of contracts, finance charges, goodwill, loss of production, increased costs of labour and/or materials, or damage to property or any consequential loss howsoever caused by a breach of the Contract or otherwise but subject always to the exceptions for death, personal injury and harm to health which cannot be excluded in accordance with statute law.

10. TERMINATION

- 10.1 Darwen Electrical Services Ltd reserves the right at any time by notice in writing to the Customer to cancel the Contract for the provision of the Services as set out in the Confirmation of Order in the event of the Customer failing to approve forthwith any plans, specifications or other matter submitted to the Customer for such approval, but without prejudice to any other rights or remedies which Darwen Electrical Services Ltd may have against the Customer.
- 10.2 If the Customer makes default or commits a breach of any of its obligations under the Contract, or any other contract with Darwen Electrical Services Ltd, or if the Customer commits any act of bankruptcy or under the provisions of Section 123 of the Insolvency Act 1986 is deemed to be unable to pay its debts or makes or offers to make any arrangement or composition with creditors or if any distress or execution or other legal process is levied upon any of the Customer's property or assets or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Customer (other than for a voluntary winding up for the purpose of bona fide solvent reconstruction or amalgamation) or if a Receiver or Manager or Administrator is appointed of all or any part of its assets or undertaking, Darwen Electrical Services Ltd will be entitled without prejudice to any other right or remedy accrued or accruing to Darwen Electrical Services Ltd to terminate the Contract in whole or in part by notice in writing and to recover from the Customer any loss on supply of the Services comprised in the Contract.
- 10.3 In the event of the performance of any obligation by Darwen Electrical Services Ltd being prevented, delayed, or in any way interfered with by:
- 10.3.1 act of God, explosion, flood, tempest, fire or accident;
 - 10.3.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 10.3.3 acts, restrictions, regulations, bye-laws, prohibitions or measure of any kind on the part of any governmental parliamentary or local authority;
 - 10.3.4 import or export regulations or embargoes;
 - 10.3.5 strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees or either Darwen Electrical Services Ltd or the Customer or of a third party);
 - 10.3.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 10.3.7 power failure or breakdown in machinery;

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10.3.8 non-delivery by Darwen Electrical Services Ltd suppliers or damage to or destruction of the whole or part of the Goods; or by any other cause beyond Darwen Electrical Services Ltd control Darwen Electrical Services Ltd may at its option suspend performance or terminate the Contract without liability for any damage or losses resulting from such suspension or termination being without prejudice to Darwen Electrical Services Ltd right to recover all sums owing to it in respect of Services performed and costs incurred to date.

11. STATUTORY REQUIREMENTS

11.1 The Customer will observe and comply with all statutes, regulations, enactments, byelaws, prohibitions or directions of any governmental, parliamentary or local authority in the United Kingdom or any other country or state in which the Services are to be provided. The Customer will indemnify Darwen Electrical Services Ltd in full against any liability to which Darwen Electrical Services Ltd may be under and the consequences thereof in respect of a breach of this clause.

12. LICENCES AND CONSENTS

12.1 The Customer will be responsible for all consents, approvals, import or other licences, permissions or authorities required by any legislation or regulations whether in the United Kingdom or elsewhere and for any failure to obtain the same unless the Contract specifically provides otherwise.

13. ASSIGNMENT AND SUB-CONTRACTING

13.1 The Customer shall not assign or transfer to any other person any of its rights under the Contract without the express consent of Darwen Electrical Services Ltd, nor sub-contract any of its obligations under the Contract.

14. INSURANCE

14.1 The Customer [warrants that it has] force the following insurance policies with reputable insurance companies to cover its relevant potential liabilities in connection with the Contract:

14.1.1 a public liability insurance policy with a limit of at least £5 million per claim;

14.1.2 employer's liability insurance with a limit of at least £10 million for claims arising from a single event or series of related events in a single calendar year

EXTENSION OF TIME

14.2 If Darwen Electrical Services Ltd is prevented or delayed in whole or in part in the performance of the Services for any reason beyond its control, then Darwen Electrical Services Ltd shall notify the Customer in writing and shall use reasonable endeavours, and in accordance with the Terms, to resume and expedite the performance of the Services so as to complete the Services.

15. CDM REGULATIONS

15.1 In respect of construction work, each party undertakes that it is competent to perform the duties referred to in these Terms and it has allocated and will allocate adequate resources to enable it to comply with its obligations pursuant to the CDM Regulations.

16. CONFIDENTIALITY

16.1 The Customer and Darwen Electrical Services Ltd will not disclose to any Third Party without the prior written consent of the other party any information in whatever form (including, without limitation, oral or written information) which is received from the other for the purposes of providing or receiving Services ("Confidential Information"). Both the Customer and Darwen Electrical Services Ltd agree that any Confidential Information received from the other shall only be used for the purposes of providing or receiving Services under this or any other contract between the parties. These restrictions will not apply to any information which:

16.1.1 is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 17; or

16.1.2 is acquired from a Third Party who owes no obligation of confidence in respect of the information; or

16.1.3 is or has been independently developed by the recipient or was known to it prior to receipt.

16.2 Notwithstanding clause 17.1, the Customer and Darwen Electrical Services Ltd will be entitled to disclose Confidential Information of the other (i) to their respective insurers or legal advisors, or (ii) to a Third Party to the extent that this is required, by any court of competent jurisdiction, or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose, provided that in the case of sub-clause (iii) (and without breaching any legal or regulatory requirement) where reasonably practicable not less than 2 business days' notice in writing is first given to the other party.

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17. DISPUTE RESOLUTION

17.1 Each party shall have the right to refer any dispute to adjudication arising under these Terms and referable to construction work. The adjudicator nominated body will be the Technology and Construction Solicitors Association (TeCSA).

18. GENERAL

18.1 The Customer shall not assign or transfer to any other person any of its rights without the express consent of Darwen Electrical Services Ltd, nor sub-contract any of its obligations under the Contract.

18.2 A notice under these Terms must be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.

18.3 No waiver by Darwen Electrical Services Ltd of any breach of the Contract by the Customer will be considered as a waiver of any prior or subsequent breach of the same or any other provision.

18.4 The parties acknowledge and agree that the Contract confers no rights on any third party and the provisions of the Contracts (Rights of Third Parties) Act 1999 is excluded in its entirety.

18.5 If any provision of these Terms is held to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

18.6 The Contract shall be governed by the laws of England and Wales, and the Customer agrees to submit to the exclusive jurisdiction of the English courts.

Darwen Electrical Services Ltd

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