# APC ELECTRICAL SERVICES (LONDON) LTD
# COMMERCIAL TERMS AND CONDITIONS OF BUSINESS

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms:

"APC", "we", "us" and "our" means the company identified above.

"Customer" means any individual, consumer, sole trader, partnership, company, contractor, developer, landlord, tenant, school, public body or other organisation engaging APC to perform the Services.

"Contract" means the legally binding agreement between APC and the Customer comprising:

(a) the Quotation;
(b) these Terms;
(c) any agreed Variation;
(d) any document expressly incorporated by APC in writing.

"Services" means all electrical installation works, maintenance services, reactive and planned maintenance, testing, inspection, certification, commissioning, design services, remedial works, maintenance services, fire alarm services, data installation services and associated works supplied by APC.

"Quotation" means APC's written quotation.

"Site" means the location at which the Services are carried out.

"Practical Completion" means the date on which APC reasonably considers the Services materially complete save for minor defects or snagging items.

"Variation" means any addition, omission, alteration, modification, redesign, resequencing or change to the Services.

1.2 Headings are for convenience only and shall not affect interpretation.

1.3 References to legislation include amendments, re-enactments and replacements.

## 2. BASIS OF CONTRACT

2.1 A Quotation shall not constitute an offer capable of immediate acceptance by the Customer.

2.2 A Contract shall arise only when:

(a) APC receives and accepts a written acceptance of an instruction;
(b) APC receives a purchase order and elects to proceed; or
(c) APC commences the Services

2.3 Where the Customer is acting in the course of a business, these Terms shall prevail over any purchase order, standard terms and conditions or other document issued by the Customer unless expressly agreed by APC in writing.

2.4 No statement, representation or promise shall form part of the Contract unless expressly incorporated into it in writing.

## 3. QUOTATIONS

3.1 All Quotations remain valid for thirty (30) days unless expressly stated otherwise.

3.2 Quotations are prepared using information available at the time of pricing and are subject to:

(a) site validation;
(b) availability of labour;
(c) availability of materials;
(d) accuracy of information supplied by the Customer.

3.3 APC reserves the right to amend pricing prior to acceptance where material assumptions subsequently prove inaccurate.

3.4 Except where expressly stated, Quotations exclude:

(a) builders' works;
(b) making good;
(c) decorations;
(d) asbestos removal;
(e) specialist surveys;
(f) planning fees;

(g) statutory fees;
(h) specialist access equipment;
(i) structural works; and
(j) any work not expressly identified.

**4. CUSTOMER OBLIGATIONS**

4.1 The Customer shall:
(a) provide unrestricted access to the Site;
(b) ensure the Site is safe;
(c) provide accurate drawings and specifications;
(d) cooperate fully with APC;
(e) ensure utilities necessary for the Services remain available;
(f) obtain any third-party consents required;
(g) provide suitable working space, access routes and storage facilities where applicable.

4.2 APC shall be entitled to rely upon all information supplied by the Customer.

4.3 APC shall have no liability arising from inaccurate or incomplete information supplied by the Customer.

4.4 APC may take photographs and videos of the Site and the Services for record, evidential and quality-control purposes. APC shall not disclose such records other than where reasonably required in connection with the Services, legal proceedings or insurance matters.

**5. SITE CONDITIONS**

5.1 APC shall not be responsible for concealed or unforeseen conditions.

5.2 If APC encounters:
(a) hidden services;
(b) defective existing installations;
(c) asbestos;
(d) contamination;
(e) structural defects;
(f) unsafe conditions;
(g) non-compliant electrical systems;
(h) water ingress; or
(i) any matter not reasonably apparent during pricing,

APC may immediately suspend the Services.

5.3 Any resulting additional work shall constitute a Variation.

5.4 APC shall be entitled to:
(a) additional payment;
(b) reasonable loss and expense;
(c) an extension of time.

**6. VARIATIONS**

6.1 APC shall not be obliged to carry out additional work without agreement.

6.2 Variations may arise from:
(a) client instructions;
(b) revised specifications;
(c) unforeseen conditions;
(d) statutory requirements;
(e) professional consultant instructions.

6.3 APC shall be entitled to assess Variations using:
(a) existing contract rates;
(b) revised quotations;
(c) reasonable valuation.

6.4 The Customer acknowledges that Variations may affect programme dates and costs.

**7. COMMENCEMENT, PROGRAMME AND DELAY**

7.1 Dates provided by APC are estimates only.

7.2 APC shall use reasonable endeavours to achieve indicated completion dates.

7.3 APC shall be entitled to an extension of time where delay arises from:
(a) Variations;
(b) restricted Site access;
(c) Customer instructions;
(d) contractor delay;
(e) consultant delay;
(f) adverse weather;
(g) material shortages;
(h) force majeure;
(i) labour shortages;
(j) statutory authority actions.

7.4 APC shall not be liable for liquidated damages, delay damages, loss of profit, consequential losses or disruption costs unless expressly agreed in writing by a director.

## 8. MATERIALS

8.1 APC may substitute materials with equivalent products of equal or better specification where availability issues arise.

8.2 Ownership of all materials shall remain vested in APC until payment in full has been received.

8.3 APC may enter the Customer's premises to recover unpaid materials where legally permissible.

8.4 Risk passes on delivery.

## 9. TESTING, INSPECTION AND CERTIFICATION

9.1 APC shall provide such testing and certification as required by law or expressly included within the Quotation.

9.2 Certification relates solely to work undertaken by APC.

9.3 APC accepts no responsibility for pre-existing installations.

9.4 APC reserves the right to withhold certificates, test results and completion documentation until all sums properly due have been paid.

## 10. PAYMENT

10.1 APC may require deposits, stage payments and interim payments.

10.2 Unless otherwise agreed, all invoices are payable within thirty (30) days of issue.

10.3 APC may suspend the Services immediately upon non-payment.

10.4 Interest shall accrue on overdue sums at: 8% above the Bank of England base rate or the maximum amount recoverable by law, whichever is greater.

10.5 APC shall be entitled to recover:

(a) debt recovery costs;
(b) legal fees;
(c) administrative costs;
(d) financing costs.

10.6 The Customer shall not set-off any alleged claim against sums due.

## 11. WARRANTIES

11.1 APC warrants workmanship for twelve (12) months from Practical Completion.

11.2 Manufacturer warranties shall pass through to the Customer where permitted.

11.3 APC shall rectify defects caused by defective workmanship notified during the warranty period.

11.4 APC shall not be liable for defects arising from:

(a) misuse;
(b) neglect;
(c) lack of maintenance;
(d) third-party interference;
(e) alterations by others;
(f) customer-supplied products.

## 12. LIMITATION OF LIABILITY

12.1 Nothing excludes liability which cannot lawfully be excluded.

12.2 APC's aggregate liability arising out of the Contract shall not exceed the lower of:

(a) £1,000,000; or
(b) 125% of the Contract Sum.

12.3 APC shall not be liable for:

(a) loss of profit;
(b) loss of revenue;
(c) loss of production;
(d) loss of opportunity;
(e) loss of goodwill;
(f) indirect loss;
(g) consequential loss.

12.4 The Customer acknowledges that the pricing has been agreed on the basis of these limitations.

## 13. CONFIDENTIALITY

13.1 Each party shall keep confidential all technical, commercial, financial and operational information obtained from the other party in connection with the Contract.

13.2 Confidential Information includes, without limitation:

(a) quotations;
(b) pricing structures;
(c) specifications;
(d) drawings and plans;
(e) designs;
(f) know-how;
(g) business information;

(h) customer information;
(i) trade secrets;
(j) programmes and schedules.

13.3 Neither party shall disclose Confidential Information except:
(a) to its employees, consultants, professional advisers, insurers and subcontractors who require such information;
(b) where required by law, court order or regulatory authority; or
(c) with the prior written consent of the other party.

13.4 This clause shall survive termination of the Contract for a period of five (5) years.

## 14. INTELLECTUAL PROPERTY RIGHTS

14.1 All intellectual property rights created, prepared or developed by APC in connection with the Services shall remain vested in APC.

14.2 All drawings, calculations, specifications, reports, designs, schedules, proposals and technical information produced by APC remain APC's property unless otherwise agreed in writing.

14.3 APC grants the Customer a non-exclusive licence to use such documents solely for the operation and maintenance of the project for which they were prepared.

14.4 The Customer shall not reproduce, amend, distribute or disclose APC documentation to third parties without APC's prior written consent.

14.5 Full ownership shall not pass to the Customer unless all monies due under the Contract have been paid in full.

## 15. HEALTH AND SAFETY

15.1 APC shall comply with applicable health and safety legislation relevant to the Services.

15.2 The Customer shall:
(a) provide APC with all available health and safety information relating to the Site;
(b) identify known hazards;
(c) notify APC of any asbestos, contamination or dangerous materials;
(d) cooperate with APC regarding safe working practices.

15.3 APC may suspend the Services immediately where:
(a) unsafe conditions exist;
(b) health and safety requirements are not met;
(c) personnel are exposed to risk of injury.

15.4 Any delay arising from a suspension under this clause shall entitle APC to:
(a) an extension of time; and
(b) recovery of associated costs and expenses.

## 16. SUSPENSION RIGHTS

16.1 APC may suspend all or part of the Services immediately upon written notice where:
(a) payment is overdue;
(b) Site conditions are unsafe;
(c) the Customer commits a material breach of the Contract;
(d) APC is prevented from carrying out the Services by acts or omissions of the Customer or third parties.

16.2 APC shall not be liable for any loss arising from such suspension.

16.3 The Contract Sum shall be adjusted to reflect all reasonable costs arising from suspension, remobilisation and disruption.

16.4 APC shall be entitled to recover all resulting loss and expense.

## 17. TERMINATION

17.1 APC may terminate the Contract immediately by written notice if:
(a) any invoice remains unpaid for more than fourteen (14) days after its due date;
(b) the Customer becomes insolvent;
(c) an administrator, liquidator or receiver is appointed in respect of the Customer;
(d) the Customer ceases or threatens to cease trading;
(e) the Customer commits a material breach of the Contract and fails to remedy it within seven (7) days of notice.

17.2 The Customer may terminate only if APC commits a material breach and fails to remedy it within twenty-eight (28) days following written notice.

17.3 Upon termination APC shall be entitled to payment for:

(a) all work executed;
(b) all materials purchased;
(c) all irrevocable commitments entered into;
(d) loss of profit on works performed to date;
(e) demobilisation costs;
(f) administrative costs associated with termination.

17.4 Termination shall not affect accrued rights and obligations.

**18. FORCE MAJEURE**

18.1 APC shall not be liable for any failure or delay resulting from circumstances beyond its reasonable control.

18.2 Such events include:

(a) acts of God;
(b) flood;
(c) storm;
(d) fire;
(e) epidemic or pandemic;
(f) war;
(g) terrorism;
(h) civil unrest;
(i) strikes or labour disputes;
(j) shortages of labour or materials;
(k) utility failures;
(l) government action;
(m) transportation disruption.

18.3 APC shall be entitled to a reasonable extension of time and reimbursement of demonstrable additional costs arising from any Force Majeure Event.

18.4 If a Force Majeure Event continues for more than ninety (90) consecutive days, either party may terminate the Contract by written notice.

**19. ANTI-BRIBERY, MODERN SLAVERY AND SANCTIONS COMPLIANCE**

19.1 Each party shall comply with all applicable anti-bribery and anti-corruption legislation.

19.2 Neither party shall engage in conduct that would cause the other party to breach applicable anti-bribery laws.

19.3 The Customer shall comply with all applicable sanctions legislation and shall not require APC to undertake any activity prohibited by law.

19.4 Each party shall comply with applicable modern slavery legislation and maintain policies and procedures designed to prevent slavery and human trafficking within its business and supply chain.

19.5 A breach of this clause shall constitute a material breach entitling APC to terminate the Contract immediately.

**20. DATA PROTECTION**

20.1 Each party shall comply with all applicable data protection legislation including UK GDPR and the Data Protection Act 2018.

20.2 Each party shall implement appropriate technical and organisational measures to protect personal data.

20.3 APC shall process personal data only to the extent reasonably necessary to provide the Services and administer the Contract.

20.4 The Customer warrants that it has obtained all necessary consents where required by law.

**21. NOTICES**

21.1 All notices under the Contract shall be in writing.

21.2 Notices may be served by:

(a) hand delivery;
(b) first class post;
(c) recorded delivery;
(d) email.

21.3 Notices shall be deemed received:

(a) upon delivery if delivered by hand;
(b) two Business Days after posting;
(c) at the time of transmission where sent by email provided no delivery failure notice is received.

21.4 Notices shall be sent to the addresses specified in the Contract or such other address notified by either party.

**22. ENTIRE AGREEMENT**

22.1 The Contract constitutes the entire agreement between the parties.

22.2 The Customer acknowledges that it has not relied upon any representation, warranty or statement not expressly contained within the Contract.

22.3 Each party agrees that its sole remedies shall be for breach of contract save in relation to fraud or fraudulent misrepresentation.

22.4 Where there is any inconsistency between the Quotation and these Terms, the Quotation shall take precedence in relation to the scope of the Services and pricing only.

**23. SEVERANCE**

23.1 If any provision of the Contract is held to be invalid, unlawful or unenforceable, such provision shall be deemed modified to the minimum extent necessary to render it valid and enforceable.

23.2 If modification is not possible, the offending provision shall be deemed deleted.

23.3 The remaining provisions shall continue in full force and effect.

**24. NO WAIVER**

24.1 A failure or delay by either party to enforce any right or remedy shall not constitute a waiver of that right or remedy.

24.2 Any waiver shall be effective only if in writing and signed by the waiving party.

24.3 A waiver of any breach shall not constitute a waiver of any subsequent breach.

**25. ASSIGNMENT AND SUBCONTRACTING**

25.1 APC may subcontract any part of the Services.

25.2 APC may assign, transfer, novate or otherwise deal with its rights and obligations under the Contract.

25.3 The Customer shall not assign or transfer any rights under the Contract without APC's prior written consent.

**26. THIRD PARTY RIGHTS**

26.1 A person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

26.2 The parties may vary or terminate the Contract without the consent of any third party.

**27. GOVERNING LAW AND JURISDICTION**

27.1 The Contract and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.

27.2 The Courts of England and Wales shall have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract.