



POWER TESTING LIMITED - SUBCONTRACTOR TERMS AND CONDITIONS

1. INTERPRETATION

The following definitions apply in these Conditions.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by PTL for the supply of the Goods and Services in accordance with clause 8 (Charges and payment).

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with 15.7.

Contract: the contract between PTL and Subcontractor for the supply of Services in accordance with these Conditions.

PTL: Power Testing Limited registered in England and Wales with company number 00956853.

Deliverables: all documents, products and materials developed by the Subcontractor or its agents, contractors and employees as part of or in relation to the Services in any form or media, (including drafts).

Goods: the goods, materials or equipment (or any part of them) set out in the Order to be supplied by Subcontractor to PTL.

Goods Specification: any specification for the Goods agreed in writing by PTL and Subcontractor.

Intellectual Property Rights: copyright and related rights, goodwill, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights which subsist or will subsist now or in the future.

Main Contractor: the persons or firms which have engaged PTL to carry out services, part of which are being subcontracted by PTL to Subcontractor.

Mandatory Policies: PTL's business policies which can be supplied upon request.

Order: PTL's order for the supply of Goods and/or Services, as set out in PTL's purchase order form or PTL's written acceptance of the Subcontractor's quotation, or overleaf, as the case may be.

Services: the services, including any Deliverables, to be provided by Subcontractor under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services as set out in Schedule 1 or otherwise agreed in writing by PTL and the Subcontractor (as applicable).

Subcontractor: the person or firm, details of which are set out on the Order, from whom PTL purchases the Goods and/or Services in accordance with the Contract.

Subcontractor Materials: materials supplied and used by Subcontractor in or for the Services.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by PTL to purchase Goods and/or Services from the Subcontractor in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) Subcontractor issuing written acceptance of the Order; or
- (b) any act by Subcontractor consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 **These Conditions apply to the Contract to the exclusion of any other terms that Subcontractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.**

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. SUPPLY OF GOODS

3.1 Subcontractor shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Subcontractor or made known to the Subcontractor by PTL, expressly or by implication, and in this respect PTL relies on the Subcontractor's skill and judgement;
- (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and safety of the Goods; and

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- (e) at the request of PTL, assign to PTL its rights under any manufacturer's warranty in respect of the Goods and where such warranty is not assignable it shall, at the request of PTL claim under such warranties and account to PTL for and proceeds recovered;
- 3.2 Subcontractor shall at all times maintain all licences, permissions, authorisations and consents needed to carry out its obligations under the Contract in respect of the Goods.
- 3.3 PTL may inspect and test Goods at any time before delivery. Subcontractor shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not otherwise affect Subcontractor's obligations.
- 3.4 If following such inspection or testing PTL considers that Goods do not comply or are unlikely to comply with Subcontractor's undertakings at clause 3.1, PTL shall inform Subcontractor and Subcontractor shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 PTL may conduct further inspections and tests after Subcontractor has carried out its remedial actions.
- 4. DELIVERY OF GOODS**
- 4.1 Subcontractor shall ensure that:
 - (a) Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
 - (b) each delivery of Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of Goods (including the code number of Goods (where applicable)), special storage instructions (if any) and, if Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 Subcontractor shall deliver the Goods:
 - (a) on the date specified in the Order or, if no such date is specified, then within 14 days of the date of the Order;
 - (b) to such other location as is set out in the Order or as instructed by PTL before delivery (**Delivery Location**); and
 - (c) during PTL's normal hours of business, or as instructed by PTL.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 If Subcontractor does not deliver the quantity of Goods ordered PTL may reject the Goods and any rejected Goods shall be returnable at Subcontractor's risk and expense. If Subcontractor delivers more or less than the quantity of Goods ordered, and PTL accepts the delivery, Subcontractor shall make a pro rata adjustment to the invoice for the Goods.
- 4.5 Title and risk in the Goods shall pass to PTL on completion of delivery.
- 5. SUPPLY OF SERVICES**
- 5.1 Subcontractor shall from the Commencement Date and for the duration of the Contract supply the Services to PTL in accordance with the terms of the Contract.
- 5.2 Subcontractor shall meet any performance dates for the Services specified in the Order, the Service Specification or that PTL notifies to Subcontractor and time is of the essence in relation to any of those performance dates.
- 5.3 In providing the Services, Subcontractor shall:
 - (a) co-operate with PTL and the Main Contractor in all matters relating to the Services, and comply with all instructions of PTL;
 - (b) perform the Services with the best care, skill and diligence in accordance with best practice in Subcontractor's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that Subcontractor's obligations are fulfilled in accordance with the Contract;
 - (d) ensure the Services and Deliverables will conform with all descriptions and specifications in the Order and the Service Specification, and that the Deliverables shall be fit for any purpose that PTL expressly or impliedly makes known to Subcontractor;
 - (e) provide all equipment, tools, vehicles and other items as required to provide the Services;
 - (f) use best quality Subcontractor Materials, standards and techniques, and ensure that the Deliverables, and all
 - (g) Subcontractor Materials will be free from defects in workmanship, installation and design;
 - (h) maintain all licences and consents which may be required for the provision of the Services;



- (i) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;
- (j) observe all health and safety rules and regulations and any other security requirements that apply at any of PTL's or the Main Contractor's premises;
- (k) hold all materials, equipment and tools, drawings, specifications and data supplied by PTL to the Subcontractor (**PTL Materials**) in safe custody at its own risk, maintain PTL Materials in good condition until returned to PTL, and not dispose or use PTL Materials other than in accordance with PTL's written instructions or authorisation;
- (l) not do or omit to do anything which may cause PTL to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.
- (m) comply with any additional obligations as set out in the Service Specification; and

6. PTL REMEDIES

6.1 If Subcontractor fails to deliver the Goods and/or perform the Services by the applicable date, PTL shall, without limiting or affecting its other rights or remedies, have the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to Subcontractor;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which Subcontractor attempts to make;
- (c) to recover from Subcontractor any costs incurred by PTL in obtaining substitute goods and/or services from a third party;
- (d) to require a refund from Subcontractor of sums paid in advance for Services that the Subcontractor has not provided and/or Goods that it has not delivered; and
- (e) to claim damages for any additional costs, loss or expenses incurred by PTL which are in any way attributable to Subcontractor's failure to meet such dates.

6.2 If Subcontractor has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, PTL shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to terminate the Contract with immediate effect by giving written notice to the Subcontractor;
- (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to Subcontractor at Subcontractor's own risk and expense;
- (c) to require the Subcontractor to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;
- (d) to refuse to accept any subsequent delivery of the Goods which the Subcontractor attempts to make;
- (e) to recover from the Subcontractor any expenditure incurred by PTL in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by PTL arising from Subcontractor's failure to supply Goods in accordance with clause 3.1.

6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by Subcontractor.

6.4 PTL's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

7. PTL'S OBLIGATIONS

7.1 PTL shall:

- (a) provide Subcontractor with reasonable access at reasonable times to the Main Contractor's premises for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Subcontractor may reasonably request.

8. CHARGES AND PAYMENT

8.1 The price for the Goods:

- (a) shall be the price set out in the Order; and



- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by PTL.
- 8.2 The charges for the Services shall be set out in the Order and/ or the Service Specification, and shall be the full and exclusive remuneration of Subcontractor in respect of the performance of the Services. Unless otherwise agreed in writing by PTL, the charges shall include every cost and expense of Subcontractor directly or indirectly incurred in connection with the performance of the Services.
- 8.3 In respect of the Goods, Subcontractor shall invoice PTL on or at any time after completion of delivery.
- 8.4 In respect of Services, the Subcontractor shall invoice PTL on completion of the Services. Each invoice shall include such supporting information required by PTL to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.5 Subcontractor may submit intermittent invoices in respect of Subcontractor Materials which have been previously approved in writing by PTL any time after the Subcontractor has incurred the costs of purchasing or supplying such Subcontractor Materials.
- 8.6 In consideration of the supply of Goods and/or Services by the Subcontractor, PTL shall pay the invoiced amounts within 45 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Subcontractor.
- 8.7 All amounts payable by PTL under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Subcontractor to PTL, PTL shall, on receipt of a valid VAT invoice from Subcontractor, pay to Subcontractor such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.8 If PTL fails to make a payment due to Subcontractor under the Contract by the due date, then PTL shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time.
- 8.9 Subcontractor shall maintain complete and accurate records of the time spent and materials used by Subcontractor in providing the Services, and Subcontractor shall allow PTL to inspect such records at all reasonable times on request.
- 8.10 PTL may at any time, without notice to Subcontractor, set off any liability of Subcontractor to PTL against any liability of PTL to Subcontractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by PTL of its rights under this clause shall not limit or affect any other rights or remedies available to it.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 Subcontractor grants to PTL, or shall procure the direct grant to PTL of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables) for the purpose of receiving and using the Services and the Deliverables.
- 9.2 All PTL Materials are the exclusive property of PTL.

10. INDEMNITY

- 10.1 Subcontractor shall indemnify PTL against all liabilities, costs, expenses, damages, losses (including but not limited to direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by PTL arising out of or in connection with:
- (a) any claim made against PTL for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding PTL Materials);
 - (b) any claim made against PTL by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
 - (c) any claim made against PTL by a third party arising out of or in connection with supply of the Goods or Services
 - (d) including but not limited to any such claim made by the Main Contractor.
- 10.2 This clause 10 shall survive termination of the Contract.

11. INSURANCE

During the term of the Contract and for a period of six years thereafter, the Subcontractor shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities



that may arise under or in connection with the Contract, and shall, on PTL's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. CONFIDENTIALITY

- 12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or subcontractors of the other party, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 12; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13. TERMINATION

- 13.1 Without affecting any other right or remedy available to it, PTL may terminate the Contract:
- (a) with immediate effect by giving written notice to the Subcontractor if:
 - (i) Subcontractor's financial position deteriorates to such an extent that in PTL's reasonable opinion the Subcontractor's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (ii) Subcontractor commits a breach of clause 5.3(i),
 - (b) for convenience by giving the Subcontractor **[one]** months' written notice.
- 13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

14. CONSEQUENCES OF TERMINATION

- 14.1 On termination of the Contract, Subcontractor shall immediately deliver to PTL all Deliverables whether or not then complete, and return all PTL Materials. If Subcontractor fails to do so, then PTL may enter Subcontractor's premises and take possession of them. Until they have been returned or delivered, Subcontractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 14.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

15. GENERAL

- 15.1 Assignment and other dealings.
- (a) PTL may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
 - (b) Subcontractor shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.



15.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by email to the address specified in the Order and/ or Service Specification.
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by email, at 9.00 am on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

15.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

15.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

15.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

15.6 **Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

15.7 **Variation.** Except as set out in these Conditions no variation of the Contract shall be effective unless it is agreed between the parties in writing.

15.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

15.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.