

**STANDARD TERMS AND CONDITIONS OF TENDER (Rev August 2022)**

**1. DEFINITIONS**

In these Standard Terms and Conditions of Tender ('Conditions') the following words, phrases and expressions shall have the following meanings:

**Act** means the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

**Completion Date** means the practical completion date of the Works or the date included in the Contract or where not so specified the date included in the Programme of Work as the date upon which the Works are to be completed in accordance with the Contract.

**Conditions** mean these terms and conditions, initially forming part of the Tender and later forming part of the Contract.

**Contract Price** means the sum(s) set out in the Order Acknowledgement.

**Contract** means the Purchase Order and these Conditions and as further clarified by the Order Acknowledgement (and any documents expressly referred to in them).

**Customer** means the individual or company as set out in the Purchase Order.

**Data Controller** has the meaning given to it in Data Protection Legislation.

**Data Processor** has the meaning given to it in Data Protection Legislation.

**Date Protection Legislation** means all applicable statutes, laws, secondary legislation, rules, regulations and guidance from a Supervisory Authority (or its UK equivalent) relating to privacy, confidentiality, security, direct marketing or data protection of Personal Data or corporate data (including any national laws implementing any such legislation (including Directives 95/46/EC, 2002/58/EC and 97/66/EC)), including the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI2003/2426), the Regulation of Investigatory Powers Act 2000 and the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699) and the General Data Protection Regulation.

**Data Subject** has the meaning given to it in Data Protection Legislation

**Day (s)** means any calendar day, including Saturday and Sunday but excluding Public Holidays.

**Enquiry** means the request from the Customer for SSE ES to provide a quotation, estimate and valuation to provide the Works.

**General Data Protection Regulation** means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC as now defined in section 3(10) of the Data Protection Act 2018, supplemented by section 205(4).

**Goods** mean all items to be supplied by SSE ES under the Contract.

**Guarantee** means the obligation to repair and/or replace set out in Clause 26.1.

**Intellectual Property** means without limitation, all database rights, rights in designs, and rights in know-how, patents and rights in inventions (in all cases whether registered or unregistered and including all rights to apply for registration) and all other intellectual or industrial property rights in any jurisdiction) in any information, content, materials, data or processes.

**Letter of Intent** means a letter issued by the Customer to SSE ES confirming the Customer's intent to enter a contract for the Works with SSE ES with a minimum financial commitment to pay for Works undertaken pursuant to the letter.

**Main Contract** means if applicable, the agreement between the Customer and its client or employer.

**Main Contractor** means if applicable, the Customers client or employer.

**Order Acknowledgment** means the formal acknowledgment by SSE ES of the Customer's Purchase Order setting out the agreed scope, price, terms and duration of the works.

**O&M** means the operation and maintenance documents including but not limited to manuals, as built drawings, drawings schedules, signed test & commissioning sheets of the Works.

**Party (ies)** SSE ES and/or the Customer, separately or collectively.

**Personal Data** has the meaning given to it in Data Protection Legislation.

**Programme of Works** means the timing and sequence of events agreed between the Customer and SSE ES for the performance of the Contract.

**Public Holiday** means a recognised bank holiday in England and Wales.

**Purchase Order** means the Customer's Purchase Order.

**Reasons Beyond Our Control** means acts of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm, explosion, epidemic or government action, general delays to our work caused by another party or reason outwith our reasonable control.

**Site** means the place where the Goods are to be delivered and/or the Works are to be carried out.

**Supervisory Authority** has the meaning given to it in Data Protection Legislation.

**SSE ES** means TESGL Limited. SSE Energy Solutions is a trading name of TESGL Limited which is part of the SSE Group. The Registered Office of TESGL Limited is Ocean Court Caspian Road Atlantic Street Altrincham WA14 5HH. TESGL is registered in England & Wales No. 08462158.

**Tender** means SSE ES's proposal or quotation corresponding to the Customer's Enquiry.

**Warranty Period** means 12 months from the date of delivery of the Goods or completion of the Works whichever date is the latter.

**Working Day(s)** means any calendar day except Saturdays, Sundays and Public Holidays.

**Works** means the works being carried out by SSE ES in accordance with the Contract.

**2. INTERPRETATION**

In these Conditions:

- 2.1 References to clauses are references to the clauses of these Conditions;
- 2.2 Headings and Sections are for convenience only and do not affect the interpretation;
- 2.3 References herein to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to that statutory provision, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it; and
- 2.3.1 Where action is required to be undertaken under a specified period of Days after or from a specified date, the period will begin immediately after that date. Where the period would include a Public Holiday that day will be excluded.

**3. ACCEPTANCE**

- 3.1 This Tender does not constitute an offer that is capable of acceptance.
- 3.2 This Tender is strictly net and exclusive of discount and rebate of any kind and based on a lump sum fixed price for the duration of the works. This tender is not based on a guaranteed maximum price and is not subject to re-measurement.

- 3.3 This Tender consists of the quotation document, the accompanying schedules and these Conditions.
- 3.4 The Contract shall not come into existence until SSE ES dispatches its written acceptance of the Customer's Purchase Order either by formal execution of the Customer's Purchase Order or issue of an official SSE ES Order Acknowledgement.

- 3.5 In the event of any subsequent conflict, ambiguity or discrepancy when the Contract comes into existence then the following order of precedence shall apply:

- SSE ES' Order Acknowledgement (if applicable),
- SSE ES' Tender,
- These Conditions,
- Customer's Enquiry, and
- Customer's Purchase Order.

**4. CONDITIONS PRECEDENT**

- 4.1 In the absence of any specific agreement this Tender is based on a 4 week mobilisation period from receipt of Order Acknowledgement.

- 4.2 SSE ES will not be commencing any works prior to the acceptance of a Purchase Order or a Letter of Intent.

**5. MAIN CONTRACT AND MAIN CONTRACTOR**

- 5.1 SSE ES does not contemplate compliance with the Main Contract between the Customer and the Main Contractor or any obligations that the Customer might attempt to enforce and SSE ES has made no allowance for compliance with it.

**6. EXCLUSIONS**

- 6.1 This Tender excludes those allowances and attendances set out in Part I of the Schedule of Particulars and further/elsewhere identified in this Tender.

**7. DESIGN RESPONSIBILITY**

- 7.1 Responsibility for the design of the system for which SSE ES have tendered shall remain vested in the authors of the specifications and information included in the tender documents.

- 7.2 This Tender includes an allowance for system engineering work to select, co-ordinate and configure equipment, hardware and software of our supply in accordance with the specifications and information received in order to satisfy the specified performance requirements insofar as these may be achievable within the capabilities of the plant, equipment and systems to be controlled.

- 7.3 This Tender includes an allowance for design standard and material selection to be of reasonable skill and care where applicable.

**8. INTELLECTUAL PROPERTY**

- 8.1 All Intellectual Property rights in any specifications, instructions, plans, drawings, patents, patterns, models, designs or other material prepared by SSE ES for the Customer, for use, or intended use, in relation to the performance of the Contract shall remain with SSE ES.

- 8.2 The Customer is granted a non-exclusive, revocable and non-perpetual license to use the Intellectual Property for the duration and purposes of the Works.

**9. PROGRAMME OF WORKS**

- 9.1 The Tender price is based upon work being completed between the two (2) dates stated in Part II of the Schedule of Particulars or SSE ES's Tender and is conditional upon the mutual agreement of a comprehensive co-ordinated Programme of Works prior to acceptance of the Customer's Purchase Order.

- 9.2 The Programme of Works shall state agreed start and completion dates and progressive timescales for receipt of information, approvals, deliveries, installation, commissioning and demonstration of the works.

- 9.3 SSE ES shall not be liable for any claim, cost, liability, loss or damage, direct or indirect, incurred by the Customer as a result of the late completion of the Works, to the extent that such late completion resulted from the Customer failing to agree a Programme of Works with SSE ES. The Customer shall indemnify and keep SSE ES indemnified against all such claims.

- 9.4 If the Customer has not given written notice to SSE ES that they rejects any Programme of Works submitted to the Customer within fourteen (14) Days of receipt by the Customer of that Programme of Works, then the Customer shall be deemed to have accepted it.

**10. TIME AND DELAY**

- 10.1 If SSE ES is delayed in the execution of its Works by the Customer, the Main Contractor or any party for who the Customer or the Main Contractor are responsible, SSE ES will notify the Customer as soon as reasonably practicable and advise the Customer of the impact on the Programme of Works (where known). For the avoidance of doubt, the delays outside of SSE ES reasonable control will be deemed to be comprised of but not limited to the list in Clause 11.1. The Customer will grant SSE ES a reasonable and fair extension of time for the completion of the Works within seven (7) Days of the notification. Should the Customer fail to grant such extension of time within the seven (7) Days, the claimed extension of time will be deemed to be granted.

- 10.2 If as a result of the delay, SSE ES incurs additional costs and expenses, SSE ES will submit to the Customer with its next monthly interim application, the valuation of its loss and expense claim.

**11. PROGRESS**

- 11.1 SSE ES has made no allowance in its Tender for:
  - (a) Disruptions;
  - (b) Lack of sequencing;
  - (c) Lack of continuity;
  - (d) Delays outside of SSE ES' reasonable control;
  - (e) Changes; or
  - (f) Design development changes.

Caused by the Customer or Main Contractor or any third party that the Customer and Main Contractor are responsible for, that SSE ES has no control over or responsibility for.

**12. WORKING DRAWINGS**

- 12.1 Unless otherwise specified in the Tender submitted by SSE ES, SSE ES undertake to provide the quantity of copies of each issue of working drawings to the Customer as set out in Part III of the Schedule of Particulars.

**13. COMMISSIONING**

- 13.1 Commissioning shall be undertaken within the Contract period during a timescale to be agreed and written into the Programme of works.

- 13.2 SSE ES shall commission all equipment within the direct scope of works where applicable in accordance with the principles of the CIBSE Commissioning Code Series C for Automatic Control Systems.

- 13.3 Should the agreed timescale cease to be accommodated within the Contract period for Reasons Beyond Our Control commissioning shall be completed thereafter and SSE ES shall be exempt from any liability any loss (including, without limitation, loss of revenues and loss of profit), damages, costs, claims or expenses whether direct, indirect or consequential.

- 13.4 Unless otherwise defined in the tender documents SSE ES shall undertake a single demonstration to client's named representative of the works to an agreed procedure and for duration as set out in Part IV of the Schedule of Particulars, to provide reasonable and adequate proof of the effectiveness of system operation. Such demonstration may take place after the original Contract period and practical completion of the works will not be dependent on a successful demonstration pursuant to this clause.
14. **TRAINING**
- 14.1 Unless otherwise specified in the tender documents SSE ES shall provide training to nominated personnel in the basic operation of the system for duration as set out in Part V of the Schedule of Particulars, to be undertaken at times to be mutually agreed in writing.
- 14.2 Any training requested, additional to the above, shall be subject to a separate supplementary quotation.
15. **BENEFICIAL USE**
- 15.1 Beneficial use of any part of the Works by the Customer, its client or the end-user prior to practical completion other than for its own commissioning and demonstration will be at SSE ES' sole discretion and SSE ES shall be exempt from any liability for damages for delay, including but not limited to liquidated and ascertained damages, or loss or damage to the Works from the date of commencement of any such beneficial use.

Contract Price	Employer's Liability	Public Liability	Product Liability	Professional Indemnity	Contractor's All Risks
Up to £5,000.00	£1,000,000.00 in the aggregate		Nil	£50,000.00 in the aggregate if SSE ES has design responsibility	Nil
Up to £50,000.00	£1,000,000.00 in the aggregate		£50,000.00 in the aggregate if SSE ES has design responsibility		Nil
Up to £100,000.00	£1,000,000.00 in the aggregate (Professional Indemnity applicable only where SSE ES has design responsibility)				Nil
Up to £500,000.00	£2,000,000.00 in the aggregate (Professional Indemnity applicable only where SSE ES has design responsibility)				Nil
Over £500,000.00	£5,000,000.00 in the aggregate (Professional Indemnity applicable only where SSE ES has design responsibility)				Nil

- 18.2 The Tender does not make provision for joint name insurances.
19. **LIMITATION OF LIABILITY**
- 19.1 Nothing in this Contract excludes either party's liability for death or personal injury, including death or personal injury caused by negligence or fraudulent misrepresentation or any other matter to the extent that such exclusion or limitation would be unlawful.
- 19.2 Subject to clause 19.1 SSE ES shall not be liable to the Customer by way of indemnity or by reason of tort (including but not limited to negligence) for any loss of profit, loss of use, loss of production, loss of contracts or for any financial or economic loss or for any indirect or consequential damage whatsoever.
- 19.3 Subject to Clause 19.1 in no circumstances whatsoever shall SSE ES' total financial contractual or tort liability to the Customer under the Conditions for any act or default exceed the Contract Price in the aggregate.
- 19.4 Unless expressly agreed in writing, SSE ES shall have no liability for liquidated and ascertained damages, delay damages, penalties and alike under the Contract to the Customer.
20. **PRICING**
- 20.1 This Tender is based upon a fixed price for contract completion up to the date stated in Part VII of the Schedule of Particulars and any works carried out beyond this date shall be subject to adjustment using a Price Adjustment Formulae for Construction Contracts as published by the Department for Business, Innovation and Skills and in particular the index for H&V works, with a material: labour ratio of 40 %: 60 % and a non-adjustable element of 5% with a base date of the month prior to the tender date.
21. **V.A.T**
- 21.1 The Tender excludes V.A.T and acceptance of SSE ES's Tender shall be deemed an agreement to pay to SSE ES all V.A.T properly chargeable and due.
22. **CHANGES**
- 22.1 SSE ES may accept at its sole discretion instructions or directions from the Customer. Any direction or instruction from the Customer resulting in a change to SSE ES' scope of Works by way of variation, alteration, addition, modification or omission, will be quoted by SSE ES and a fixed price agreed prior to SSE ES starting works.
- 22.2 The value of any agreed change shall be ascertained by reference to the rates and prices, if any, specified in the Contract for similar or analogous work, but if there are no such rates or prices, or if they are not applicable, then the value shall be such as is fair and reasonable in all the circumstances.
- 22.3 The valuation of the agreed change shall be added to or deducted from the Contract price as the case may require in the following monthly interim application. Where the scope of Works cannot be progressed in the same manner as the original scope of Works, time and material records and day work rates will be applied with the following percentage additions to the RICS/HVCA definition of prime costs of labour, materials and plant subject to SSE ES receiving an instruction from the Customer: Labour 250 %, Material 30 %, Plant 30 % Subcontractors 25%.
23. **PAYMENT**
- 23.1 **General**
- 23.1.1 SSE ES reserves the right to seek payment guarantees in the form of pro-forma invoice, parent company guarantee, availed bill of exchange or such other assurance as SSE ES may deem appropriate following credit check.
- 23.1.2 Unless specifically agreed in writing by SSE ES, no retention shall be deducted and/or applied to any payment made or due by the Customer and no retention bond has been allowed for by this Tender.
- 23.1.3 Payments shall be made by BACS transfer unless agreed otherwise.
- 23.1.4 No form of 'pay when paid' will be applicable to this Contract unless as set out within s.113 of the Act.
- 23.1.5 No form of 'condition precedent' requirement will be applicable to this Contract.
- 23.1.6 Upon successful Contract formation, SSE ES will provide, upon request by the Customer, within twenty eight (28) Days, a quantified schedule of rates for the full Tender price, which is to be used for the subsequent changes valuations. The Customer will not be required to approve the quantified schedule of rates and failure or lack of issue of a quantified schedule of rates will not result in subsequent changes not being paid.
- 23.2 **Process**
- 23.2.1 The payment provisions shall be in accordance with the Act following appropriate payment terms. The relevant period shall be twenty eight (28) Days. SSE ES shall be entitled to submit monthly interim applications to the Customer for the Works properly and duly carried out during the relevant period.
- 23.3 **Due date and Payment Notice**
- 23.3.1 The payment due date shall be seven (7) Days after the end of the relevant period or the date of issue of a claim by SSE ES whichever is the later.
- 23.3.2 The Customer shall within five (5) Days of the payment due date issue to SSE ES a payment notice specifying to what the payment relates to and the basis upon which the amount is calculated. Subject to any payless notices, the Customer will pay the amount stated in the payment notice by the final date for payment.
- 23.3.3 The payment notice shall include the value of any Works performed during the relevant period. These works shall include work carried out on and off Site (including but not limited to mobilisation costs and engineering costs). SSE ES shall be entitled to interim payment for off-Site manufacture of control panels and where SSE ES are requested to deliver products to addresses off-Site then the value of these items shall also be included in the payment. Where applicable the notice shall also include payment for any loss and/or expense properly incurred by SSE ES.
16. **RECORD DRAWINGS AND OPERATION & MAINTENANCE MANUALS**
- 16.1 SSE ES undertake to provide 'As Installed' Drawings and O&M Manuals in the quantity and within the number of weeks from the completion of commissioning of the Works as defined in Part III and VI of the Schedule of Particulars. SSE ES will provide marked-up drawings in a PDF format.
17. **COMPUTER SOFTWARE LICENSING**
- 17.1 The Tender may be conditional upon the identified end-user of the system of our works entering into an End User License Agreement ("EULA") or such other required licensing terms and conditions for the software associated with the Works. The Customer agrees to comply with the EULA and/ or any licensing terms and conditions and shall indemnify and hold SSE ES harmless for any costs, losses or damages as a result of a breach of the EULA or other licensing terms by the Customer, Main Contractor, employer or other end user of the software.
18. **INSURANCE**
- 18.1 The terms and values of SSE ES insurance cover limits are available upon request. Alternatively, depending on this Tender price, the following allowances have been made:
- 23.3.4 If the Customer fails to issue a valid payment notice within the required timeframe, the Customer will pay SSE ES the amount specified and claimed for in its monthly interim application subject to the issue of any payless notice by the Customer.
- 23.4 **Final date and Payless Notice**
- 23.4.1 The final date for payment shall be twenty three (23) Days after the payment due date.
- 23.4.2 The Customer shall have up to seven (7) Days before the final date for payment to issue a valid payless notice. If the Customer issues a valid payless notice, the Customer will pay SSE ES by the final date for Payment, the sum specified in the payless notice. The validity of payless notice shall be determined by SSE ES acting reasonably.
- 23.5 **Suspension**
- Should the Customer fail to make full payment to SSE ES in accordance with clause 23, and such failure continues for seven (7) Days after SSE ES have given the Customer written notice of the same, then SSE ES may suspend the further execution of the Works or any part thereof until such payment has been made and such suspension shall not be deemed a failure on SSE ES' part to proceed with the Works.
- 23.6 **Interest**
- If the Customer fails to make payment to SSE ES in accordance with clause 23 and also fails to give SSE ES a payless notice in respect of the sums not paid, then the Customer shall make payment to SSE ES, in addition to the principal amount not paid, simple interest thereon for the period from the final date for payment to the date payment is made. The rate of interest shall be 8% over the Base Rate of the Bank of England current at the date of the Customer's default.
- 23.7 **Final Account**
- 23.8 Within three (3) months of practical completion of the Works or at the Completion Date, SSE ES will issue a final account statement to the Customer. The Customer will have fourteen (14) Days from notification of the final account to raise any objections to the final account. Failure to comply will result in the final account statement issued by SSE ES becoming final, conclusive and binding.
- 23.9 Should the Customer object to the final account statement in accordance with clause 23.8, the Parties will have 2 months to seek to agree a final account sum for the Works and changes, escalating to director level as necessary. Failure to agree a final account within two (2) months will result in the Parties elevating the matter to dispute resolution.
- 23.10 When the final account is agreed, or if the Customer has failed to raise objections in accordance with clause 23.8, SSE ES will issue its final payment application. The payment terms applicable are as set out in clause 23.
24. **INSPECTION AND REJECTION**
- 24.1 The Customer will be entitled to inspect the Goods and Works on a non-intrusive basis.
- 24.2 Unless the Customer has evidenced proof to believe the materials are faulty or the workmanship is poor, any costs and/or expenses suffered by SSE ES as a result of the inspection and rejection, will be reimbursed by the Customer to SSE ES in the following monthly application without any abatements, set-offs or deductions.
- 24.3 If the inspection results in a rejection by the Customer of the Goods and/or Works because of faulty materials or poor workmanship, clause 26 will apply.
25. **DELIVERY, TITLE AND RISK**
- 25.1 Nothing in these Conditions will be read or interpreted as creating a liability for the Parties for a fault, default, act, omission, negligence etc. by the other or a third party unless it is responsible for it.
- 25.2 Title in the Goods (excluding software) and/or Works will not pass to the Customer until SSE ES have received in full, in cash or cleared funds, all sums due to it in respect of the Goods and /or Works and all other sums which are or which become due to SSE ES on any account. The terms of the Customers licence for use of the software shall be as set out in the EULA or within the software itself.
- 25.3 The risk passes onto the Customer upon delivery of the Goods on Site or incorporation of the Works in the Customer's works.
- 25.4 Until title in the Goods and/or Works passes to the Customer, the Customer shall :  
(a) Hold the Goods and/or Works on a fiduciary basis as SSE ES's bailee;  
(b) Will not remove, deface or obscure any identifying mark on the Goods and/or Works;  
(c) Maintain the Goods and/or Works in good condition;  
(d) Shall give SSE ES such information about the Goods and/or Works as SSE ES may require from time to time;  
(e) Shall be entitled to use the Goods and/or Works in the ordinary course of its business; and  
(f) Keep the Goods and/or Works suitably insured.
- 25.4 Risk in the Works shall pass to the Customer upon installation at site.
26. **DEFECTS LIABILITY**
- 26.1 SSE ES warrant to use their reasonable endeavours to rectify all notified defects to the Works or any part thereof for a period of 12 months from the date of practical completion or commencement of beneficial use whichever is the earlier; provided such defects arise out of SSE ES's faulty materials and/or workmanship.
- 26.2 The warranty given pursuant to clause 26.1 will become void if the Customer and/or any other person undertake any alterations or repairs without SSE ES' written consent or if the Customer fails to notify SSE ES within five (5) Working Days of becoming aware of the defect;
- 26.3 This warranty is conditional that the Customer shall first be required to ask SSE ES to  
(a) Repair the Goods/Works or

- (b) Supply satisfactory replacements (free of charge and within a reasonable period to be mutually agreed), prior to taking any further action;
- 20.4** Where SSE ES does repair the Goods, or supplies satisfactory substitute Goods (or any similar rectification), SSE ES shall not be liable for any loss or damage arising from the initial delivery of the original defective Goods/Works (before the defective Goods/Works are repaired/substituted).
- 27. HEALTH AND SAFETY, STATUTORY AND OTHER OBLIGATIONS**
- 27.1** SSE ES will comply with all SSE ES safety, health and environment, legal and internal corporate requirements, for the execution of the Works.
- 27.2** SSE ES will comply with all its statutory obligations relevant for the execution of the Works.
- 27.3** Notwithstanding any other provision of these Conditions, nothing in these Conditions shall be interpreted or construed as creating a liability on one Party for, including but not limited to, the fault, default, act, omission, negligence, of the other.
- 27.4** Notwithstanding any other provision of these Conditions, the Parties will use their reasonable endeavours at all times to mitigate the other Party's losses, costs, expenses and damages.
- 28. BRIBERY, COMPETITION AND FRAUD**
- 28.1** If SSE ES has reasonable suspicions to suspect the Customer has infringed any applicable regulations and statutory obligations relating to bribery, competition or fraud, whether the regulations are national, European or internal, SSE ES will be entitled to suspend and/or terminate, at its own discretion the whole or part of the Works without any liability whatsoever and the Customer shall indemnify SSE ES for any claims, liabilities, damages, costs, expenses and/or losses incurred by SSE ES.
- 29. TERMINATION**
- 29.1** Without prejudice to any rights and remedies available to SSE ES, whether under the Contract or otherwise, SSE ES shall be entitled in its absolute discretion and upon giving to the Customer written notice of its intention to do so, either to terminate wholly or in part the Contract and/or any other Contract with the Customer or to withhold, vary or suspend performance of all or any of its obligations under the Contract or any other Contract in any one or more of the following events:-
- (a) If any sum owing to SSE ES from the Customer on any account whatsoever shall be unpaid after the final date for payment;
- (b) If the Customer shall refuse to take delivery or collect any of the Goods and/or Works in accordance with the Conditions of the Contract;
- (c) If an Insolvency occurs;
- (d) If the Customer shall commit any breach of any Contract with SSE ES;
- (e) If SSE ES in good faith shall have doubts as to the solvency of the Customer;
- (f) Where it is necessary to make alternative arrangements to deal with supply shortages. In such circumstances, the Customer's obligation to purchase Goods hereunder shall remain binding to the extent that SSE ES meets the Customer's Purchase Order;
- (g) If the Customer shall exceed the credit limit agreed between it and SSE ES from time to time on any account. SSE ES shall be entitled to require as a condition of resuming performance under the Contract in such circumstances, the payment of such proportion of the sums or sum outstanding on any such account by the Customer or such further sums as SSE ES sees fit in its absolute discretion to bring the Customer back within its agreed credit limit;
- (h) If the Customer refuses to permit or hinders performance of the Contract. SSE ES shall be entitled to exercise its rights of termination or suspension hereunder at any time during which the event giving rise thereto shall not have ceased or been remedied, and in the circumstances of any such suspension, SSE ES shall be entitled to require as a condition of resuming performance under the Contract, pre-payment of or such security as it may stipulate for the payment of any sum or sums due or to become due to it. Upon any such event happening SSE ES shall also have a general lien over all monies and property of the Customer in its possession for any sums due to SSE ES.
- 30. SET-OFF**
- 30.1** The Customer shall have no right of set-off: contractual, cross-contractual or otherwise, nor shall the Customer have any entitlement to recuperate any sums due as a debt.
- 31. OPEN BOOK**
- 31.1** This Tender excludes for any open book processes or procedures.
- 32. VALIDITY**
- 32.1** The Tender is not an offer capable of acceptance. Acceptance of this Contract shall be deemed to be upon SSE ES issuing an Order Acknowledgement to the Customer or performance of the Works, whichever is earlier.
- 32.2** The price contained in the Tender, subject to the assumptions, clarifications, exclusions and comments contained therein, will be held open from the date of Tender for the period set out in Section VIII of the Schedule of Particulars.
- 33. ADJUDICATION**
- 33.1** It at any time a conflict or difference arises relating to or in connection with the Works, either party shall have the right to give the other written notice of its intention to refer that dispute or difference to adjudication. An application is to be made to the Royal Institution of Chartered Surveyors for the appointment of an adjudicator and the adjudication shall be conducted in accordance with the Statutory Scheme for Construction Contracts (England and Wales) Regulations 1998.
- 34. BONDS GUARANTEES AND WARRANTIES**
- 34.1** This Tender makes no allowances to for SSE ES to provide any forms of performance bonds / parental company guarantees or any other third party warranties unless specifically agreed in writing.
- 34.2** Where SSE ES has design responsibility, SSE ES will make allowance for the provision of a collateral warranty in a form to be mutually agreed.
- 35. WAIVER**
- 35.1** SSE ES failure to insist upon strict performance of any provision of the Contract or to exercise any right or remedy shall not constitute a waiver of that right or remedy, no waiver shall be effective unless it is expressly stated to be a waiver and communicated to the Customer in writing, and a waiver of any right or remedy shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.
- 36. CONFIDENTIALITY and Data Protection**
- 36.1** Any confidential or sensitive information belonging to SSE ES or provided by SSE ES to the Customer shall under no circumstance be made available to the public or any other third parties unless express prior authorisation is given by SSE ES. This obligation continues after the Contract ends, except in relation to specific material made public by SSE ES. Such occurrence will be considered as material breach and may lead to termination of the Contract or court application for interim interdict/ interdict or injunction.
- 36.2** Personal Data. SSE ES and the Customer acknowledge that, for the purposes of Data Protection Legislation, the Customer may supply SSE ES, or SSE ES may collect from the Customer's Personal Data. SSE ES shall use this Personal Data to provide the Works under these Conditions and inform other SSE ES business services.
- 36.3** SSE ES shall:
- 36.3.1** Process Personal Data to the extent, and in such a manner, as is necessary for the purposes specified to deliver the Works and in accordance with SSE ES's documented policies (including with regard to transfers of Personal Data outside of the UK or to an international organisation);
- 36.3.2** Take reasonable steps to ensure the reliability of SSE ES employees who have access to the Personal Data and that they have undertaken training in the laws relating to handling Personal Data;
- 36.3.3** Use reasonable endeavours to assist the Customer with reasonable requests in respect of its Personal Data held by SSE ES.
- 36.3.4** Use reasonable endeavours to secure Personal Data and ensure it is accurate and up to date. SSE ES shall retain data in accordance with its policies and procedures for data retention.
- 36.4** SSE ES and the Customer acknowledge that, for the purposes of Data Protection Legislation, SSE ES may supply the Customer with Personal Data during the course of providing Works. The Customer shall be the Data Processor in connection with this Personal Data.
- 36.5** Notwithstanding any other right or obligation arising under these Conditions, the Customer shall:
- 36.5.1** Take all technical and organisational measures to ensure a level of security appropriate to the risk and as necessary or desirable to ensure that SSE ES Personal Data is protected against loss, destruction and damage, and against unauthorised access, use, modification, disclosure or other misuse.
- 36.5.2** Process SSE ES Personal Data only to the extent, as is necessary for the purposes specified in these Conditions
- 36.5.3** Keep a written record of any processing of Personal Data it carries out, containing all information required by Data Protection Legislation, and make this record available on request;
- 36.5.4** Ensure the reliability of employees who have access to the Personal Data and shall ensure that:
- 36.5.4.1.1** Access to the Personal Data is limited to those employees who need access to the Personal Data to meet the Customer's obligations under these Conditions; and all employees are informed of the confidential nature of, and are subject to binding confidentiality obligations in respect of, the Personal Data;
- 36.5.4.1.2** Only process Personal Data on instructions from SSE ES (unless otherwise required to do so by UK law); have undertaken training in the laws relating to handling Personal Data; and are aware both of the Customer's duties and their personal duties and obligations under such laws and these Conditions;
- 36.5.5** Not disclose Personal Data to any third party without the written authority of SSE ES;
- 36.5.6** Promptly comply with any request from SSE ES to amend, transfer or delete Personal Data;
- 36.5.7** Assist SSE ES in ensuring compliance with its security, data breach notification, impact assessment obligations;
- 36.5.8** Contribute to audits and inspections to demonstrate the Customer's compliance under clause 36;
- 36.5.9** Process Personal Data in compliance with all Data Protection Legislation and shall not do or omit to do anything which causes SSE ES to breach any Data Protection Legislation or contravene the terms of any registration, notification or authorisation under any Data Protection Legislation of SSE ES;
- 36.5.10** Not transfer Personal Data outside the UK without the prior written consent of SSE ES (such consent SSE ES may in its absolute discretion prescribe);
- 36.6** The Customer shall notify SSE ES immediately if:
- 36.6.1** it receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data or to either party's compliance with Data Protection Legislation and/or the data protection principles set out therein;
- 36.6.2** in the Customer's opinion, any instruction given by SSE ES to the Customer infringes Data Protection Legislation;
- 36.6.3** It becomes aware of a breach of this clause 36 or if it becomes aware of any suspected or detected (actual or potential) breach of security, unauthorised/unlawful processing, compromise, loss, destruction, damage or corruption of SSE ES Data.
- 36.7** Taking into account the nature of the processing, the Customer shall assist SSE ES with fulfilling its obligations in respect of Data Subject rights under Data Protection Legislation.
- 36.8** The Customer may only authorise a third party (sub-contractor) to process the Personal Data:
- 36.8.1** Subject to SSE ES's prior written consent;
- 36.8.2** Provided that the third party is subject to a contract on terms the same as set out in this clause 35;
- 36.8.3** Provided that, if the third party fails to fulfil its obligations referred to in clause 36.6.2, the Customer shall remain fully liable to SSE for the performance of the third parties obligations; and
- 36.8.4** Provided that the third parties contract terminates automatically on termination of these Conditions.
- 36.9** The Customer shall indemnify SSE ES and SSE group companies for (and hold SSE ES and SSE group companies harmless from) all liabilities, losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation, and all interest, penalties and legal costs (calculated on an indemnity basis)), costs, damages, expenses (including management time) and charges incurred or suffered by it or any SSE group company arising in connection with an act or omission of the Customer (or its subcontractors) in breach of this clause 36.
- 37. SEVERANCE**
- 37.1** If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 38. FORCE MAJEURE**
- SSE ES shall not be liable for delay in performing or for failure to perform its obligations if the delay or failure results from any of the following:
- (a) Act of God;
- (b) Outbreak of war, hostilities, riot, civil disturbance, acts of terrorism;
- (c) The act of any government or authority including refusal or revocation of any license or consent);
- (d) Fire, explosion, flood or severe weather;
- (e) Power failure, failure of telecommunications lines, failure or breakdown of plant, machinery or vehicles;
- (f) Default of suppliers or sub-contractors;
- (g) Theft, malicious damage, strike, lock-out or industrial action of any kind; and
- (h) Any cause or circumstance whatsoever beyond the reasonable control of SSE ES.
- 39. THIRD PARTY RIGHTS**
- 39.1** For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in this Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to this Contract.
- 40. NO ASSIGNMENT**
- 40.1** The Customer shall not be entitled to assign, transfer or sub-let in any form the Contract to a third party without SSE ES prior written consent and the execution of a novation agreement. SSE ES shall be entitled to assign the Contract to a third party by giving the Customer seven (7) Days notification of such assignment.
- 41. LAW**
- 41.1** Any contract arising from this Tender shall be to the Laws of the England and Wales, and both parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 42. NO ORAL AMENDMENT**

42.1 No amendment, change or variation to these Conditions shall take effect unless it is in writing and agreed by authorised representatives.

**43. REPRESENTATIONS AND WARRANTIES**

43.1 Each Party represents and warrants to and for the benefit of the other Party as follows:

43.2 It is a company legally and duly incorporated and validly existing, is a separate legal entity capable of suing and being sued and has the power and authority to own its assets and conduct the business which it conducts and/or proposes to conduct;

43.3 Each Party has the power to enter into and exercise its rights and to perform and comply with its obligations under the Contract;

43.4 Its entry into, exercise of its rights under and/or performance of, or compliance with, its obligations under the Contract do not and will not violate or exceed any power granted or restriction imposed by any law or regulation to which it is subject or any document defining its constitution and do not and will not violate any agreement to which it is a party or which is binding on it or its assets'

43.5 All actions and conditions required by law to be taken, fulfilled and done in order to enable it lawfully to enter into, exercise its rights under and perform and comply with its obligations under the Contract, to ensure that those obligations are valid, legally binding and enforceable and to make the Contract admissible in evidence in Courts or before an arbitral tribunal, having been taken, fulfilled and done;

43.6 Its obligations under this Contract are valid, binding and enforceable.

**44. HARDSHIP**

44.1 Where the performance of the Contract becomes more onerous for SSE ES, SSE ES is nevertheless bound to perform its obligations subject to the following provisions on hardship.

44.2 There is hardship where the occurrence of events fundamentally alters the equilibrium of the Contract whether because the cost of performance has increased or because the value of the performance has diminished, and

(a) The event was one which it could not reasonably have been expected to have taken into account at the time of the formation of the Contract; and that

(b) The event or its consequences could not reasonably be avoided or overcome.

If such hardship occurs the Parties are bound, within a reasonable time of the invocation of this Clause, to negotiate alternative contractual terms which reasonably allow for the consequences of the event.

44.3 Where alternative contractual terms are not agreed upon within a reasonable period, SSE ES will be entitled to terminate the Contract.

**45. NOTICES AND COMMUNICATION**

45.1 All communications including but not limited to requests, demands or claims between the Parties shall be in writing and in English language.

45.2 For the avoidance of doubt, electronic mail communications will be deemed valid for including but not limited to correspondence relating to payments, progress, completion, etc.

45.3 All notices or claims including but not limited to commencement, suspension, termination notifications must be given by:

- (a) Personal delivery;
- (b) A nationally recognised next-day courier service;
- (c) First class registered or certified mail, postage prepaid;

To the Party's address specified in the Order Acknowledgement for SSE ES or in the Purchase Order for the Customer.

45.4 A notice or claim given in accordance with these Conditions will be effective upon receipt.

**46. NO PARTNERSHIP OR AGENCY**

46.1 Nothing in this Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise either party to act as agent for the other and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

SSE ES –CON- TEN- August 2022 [END]