

## CONVERGE TECHNOLOGY LIMITED CONTRACT CONDITIONS

### 1. Definitions

**Agreed Programme** means the programme agreed between the Client and Contractor for the execution of the Services, as adjusted in accordance with the Contract. If no such programme exists then the time for completion shall be a reasonable time from commencement.

**Client** means the person to whom the Quotation is addressed.

**Contractor** means the Converge Technology Limited, registered under company number 08225307.

**Contract** means the agreement between the Contractor and Client upon and in accordance with the Quotation and the Purchase Order.

**Contract Conditions** means these terms and conditions and any other condition as defined in Clause 2 below.

**Contract Documentation** means the drawings, and other documents listed in, or referred to in the Quotation, and any further drawings or documents and any modification of such drawings or documents to enable the Services to be performed.

**Fee** means the fees as referred to in the Quotation and subsequent Purchase Order

**Insolvent** means where a party is an individual when he becomes bankrupt or makes a composition or arrangement with his creditors and where a party is a company where there is evidence that the Client's solvency may jeopardise completion of the project or it makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 2006, the Insolvency Act 1986 or the Enterprise Act 2002 (as amended from time to time) or has a provisional liquidator appointed, or has a winding-up order made against it, or passes a resolution for a voluntary winding-up (other than for the purposes of amalgamation or reconstruction), or under the Insolvency Act 1986 (as amended from time to time) has an administrator or administrative receiver appointed.

**Quotation** means the priced letter or email enclosed with the Contract Conditions.

**Purchase Order** means an order issued by either the Client or the Contractor confirming the Quotation.

**Services** means the services as described in the Agreed Programme

**Variation** means any change to the Contract after acceptance of the Quotation by the Client whether or not confirmed by a Purchase Order.

### 2. Contract Conditions

2.1 Unless previously withdrawn, the Quotation is open for acceptance for one month from the date of the Quotation.

2.2 No other standard or other terms advanced by the Client are incorporated into the Contract. In the event of a conflict between the Contract Conditions and the Quotation, the Contract Conditions shall prevail.

2.3 The Quotation constitutes an offer by the Contractor to the Client. Where the Quotation is not expressly accepted either orally or in writing, the Client allowing commencement of the Services including commencement of procurement shall constitute acceptance notwithstanding the absence of any Purchase Order.

### 3. Performance

3.1 The Contractor shall carry out the Services using reasonable skill and care.

3.2 Where the Quotation expressly includes design, the Contractor shall use the reasonable skill and care to be expected of a contractor in such design.

3.3 The Client will provide all documentation and any such further information and instructions that the Contractor may reasonably require so as not to prejudice the Contractor's ability to execute and complete the Services in accordance with the Agreed Programme.

3.4 In so far as the Contractor's rights may have been validly excluded, restricted or limited in respect of any materials incorporated into the Services, then the Contractor's liability to the Client shall be excluded, restricted or limited accordingly.

3.5 The Client shall be fully responsible for and shall indemnify the Contractor and its sub-contractors against all losses, liabilities, claims and costs arising directly or indirectly out of or in connection with or as a result of the death of or personal injury to any servant, agent or employee of the Client save where such death or personal injury occurs as a result of the Contractor's (and/or its sub-contractors') negligence.

### 4. Date for Completion and Delay

4.1 The Contractor shall use all reasonable endeavours to meet any performance dates specified in Agreed Programme but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.2 The Contractor shall have no financial liability for late completion unless otherwise agreed in writing.

### 5. Variations

5.1 Any Variations shall be made in writing by the Client or confirmed in writing by the Contractor to the Client. If the Client does not acknowledge the Contractor's confirmation within two (2) days of its issue, it shall be deemed accepted by the Client in accordance with clause 10 below.

5.2 Without prejudice to clause 5.1 above, the Contractor shall wherever possible quote for each Variation and seek agreement of such additional sums with the Client in advance but commencement of any work subject to

the Variation shall always be deemed as acceptance of the additional sums payable by the Client unless it gives notice to the contrary to the Contractor before that date.

5.3 Notwithstanding clause 5.2 above, where no price has been agreed and the Client may still wish the additional work to go ahead it shall be priced on a day work basis. Day work rates shall be £[460.00] per day for installations and £[600.00] per day for engineering based on an 8 hour day including breaks. These figures include profit and overheads but exclude VAT.

### 6. Payment

6.1 The Client will pay the Fee in accordance with this clause 6.

6.2 The Contractor will, at its sole discretion, either submit its invoice or application for payment stating the value and basis of the work undertaken and materials delivered to site at the end of each month or upon completion of the Services, depending on the length of the Agreed Programme.

6.3 The due date for payment will be the date of the invoice.

6.4 The final date for payment of any sum due under the Contract shall be 30 days after the due date for payment. .

6.5 Not later than 5 days after the due date for payment, the Client will issue an interim payment certificate specifying the amount and basis of the payment that is to be made to the Contractor.

6.6 If an interim payment certificate is not issued in accordance with clause 6.5, then where the Contractor has made an interim payment application or invoice in accordance with clause 6.2, that application is for the purposes of these Contract Conditions an interim payment notice;

6.7 Subject to any pay less notice given by the Client under clause 6.7.1, the sum to be paid by the Client on or before the final date for payment shall be the sum stated as due in the interim payment certificate.

6.7.1 If the interim payment certificate is not issued in accordance with clause 6.5, but an interim payment notice has been given under clause 6.6, the sum to be paid by the client shall, subject to any pay less notice under clause 6.8, be the sum stated as due in the interim payment notice.

6.8 Not later than 7 days before the final date for payment the Client may give notice that it intends to pay less than any amounts due under this Contract and the basis for doing so and, if more than one basis, the amount attributable to each basis. Where a pay less notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.

6.9 A Pay Less Notice

(i) given by the Client shall specify both the sum that it considers to be due to the Contractor at the date the notice is given and basis on which that sum has been calculated;

(ii) May not be given in relation to a payment for which an interim payment certificate has not been issued until the Contractor has in respect of the payment given an interim payment notice; and

(iii) In relation to the requirement for the issue of certificates and the giving of notices under clause 6, it is immaterial that the amount then considered to be due may be zero.

6.10 The Contractor may at any time, without limiting any of its other rights or remedies, set off any liability of the Contractor to the Client against any liability of the Client to the Contractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

### 7. Suspension

7.1 Subject to clause 7.2 If the Client fails to pay any sum due to the Contractor within the time specified herein the Contractor shall be entitled to suspend the Services or any part thereof and the Client shall pay to the Contractor, in addition to the sum due, interest thereon calculated in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

7.2 The Contractor may not suspend the Services under clause 7.1, without firstly giving to the Client a minimum of 7 days' notice of its intention to suspend the performance of its obligations under the Contract and the ground or grounds on which it intends to suspend performance. The Contractor may suspend performance of any or all of those obligations until payment in full is made.

7.3 Where the Contractor exercises its right of suspension under clause 7.1, it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right. Such as the cost of remobilisation, redeploying labour and extending his hire periods and preliminaries.

7.4 Any period during which performance is suspended in pursuance of, or in consequence of, the right conferred by this clause shall be disregarded in computing for the purposes of any contractual time limit, the time taken by the Contractor in completing the Services.

7.5 Where the contractual time limit is set by reference to a date rather than a period, the date shall be adjusted accordingly.

8. Third Parties
- 8.1 Nothing in the Contract Conditions confers or purports to confer any right to enforce any of its terms on any person who is not a party to it and the provisions of the Contract (Rights of Third Parties) Act 1999 shall be of no effect in respect of this Contract.
9. Notices
- 9.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:
- 9.1.1. 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
- 9.1.2. sent by fax to its main fax number.
- 9.2 Any notice shall be deemed to have been received:
- 9.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 9.2.2. 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; or
- 9.2.3. if sent by fax, at 9.00 am on the next Business Day after transmission.
- 9.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.
10. Instructions
- 10.1 Verbal instructions are accepted on the basis that the Contractor will not be held responsible for any error or omissions due to oversight or misinterpretation of those instructions.
- 10.2 Wherever possible in the circumstances, the Contractor the Contractors shall seek confirmation of verbal instructions in writing bringing such confirmation request to the immediate attention of the Client or its representative, the terms of which shall be deemed accepted by the Client unless it instructs otherwise in writing within 48 hours of its issuance.
- 10.3 Where the Client does not agree with the confirmation of verbal instructions by the Contractor, a dispute will have deemed to arisen and representatives of each party shall meet as soon as reasonably practicable in order to agree how the Services are to be progressed and the dispute shall be dealt with in accordance with clause 14 below.
- 10.4 Notwithstanding clause 8.1 above, any instruction given by any representative of the Client shall be taken as in instruction authorised by the Client.
11. Termination
- 11.1 Without prejudice to any other rights or remedies the Contractor may have, if:
- 11.1.1. the Client becomes or is about to become Insolvent; or
- 11.1.2. the Client is in default of the terms of this Contract and, following notice given by the Contractor to the Client specifying the default, continues in such default for 7 days the Contractor shall be entitled to treat the Contract as terminated and to recover the sum quoted in the Purchase Order as a debt.
- 11.2 The Contractor may terminate the Contract at any time and, upon Contractor termination, the Contractor shall be entitled to recover from the Client any sums properly due and payable under the Contract.
- 11.3 The Client may terminate the Contract at any time upon giving the Contractor 14 days' written notice.
- 11.4 If the Client terminates the Contract in accordance with clause 11.3 above, the Contractor shall render an invoice for previously unbilled time, materials and projected lost overhead and profit. Such invoice shall be payable in accordance with clause 6 of this Contract.
12. Insurance
- 12.1 The Contractor shall effect and maintain a policy of comprehensive general liability insurance, with a policy limit of not less than £5,000,000 (five million pounds) for injury to or death of persons or loss of or damage to property.
- 12.2 The Contractor shall effect and maintain a policy of professional indemnity insurance, with a policy limit of not less than £ [1,000,000.00] [one million pounds].
- 12.3 Insurance will be for the duration of the contract
13. Copyright
- The copyright in all drawings reports specifications bills of quantities calculations and other similar documents provided by the Contractor in connection with the Services shall remain the property of the Contractor.
14. Disputes
- 14.1 If a dispute or indifference arises under the Contract which cannot be resolved by direct negotiations, each party shall give serious consideration to referring the matter to mediation.
- 14.2 The parties to the Contract may at any time refer any dispute arising under the Contract for adjudication and the adjudication provisions of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 shall apply to this Contract. The nominating body shall be RICS.
- 14.3 Save as above, any dispute arising under this agreement shall be determined by litigation and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.
15. Charges
- 15.1 We reserve the right to charge a fee of £250 + Vat per revisit if Converge Engineers are prevented from carrying out scheduled works through no fault of their own (e.g. no access to required facilities or required customer personnel not available)