
CONNECTION SERVICE TERMS AND CONDITIONS

1. Definitions and Interpretation

- 1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
- “Adoption”** means adoption of the Works by the Network Operator
- “Business Day”** means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England;
- “CDM Regulations”** the Construction (Design and Management) Regulations 2015
- “Client”** means the party procuring the Works from Sinewave;
- “Commencement Date”** means the date on which the Works will commence, as defined in the Specification;
- “Contract”** the contract between Sinewave and the Client for the supply of the Works in accordance with these Terms and Conditions.
- “Fees”** means any and all sums due under the Contract from the Client to the Sinewave, as specified in the Specification (or agreed following a change requested under clause 0);
- “Network Operator”** means the relevant distribution network operator or independent distribution network operator
- “Order”** the Client's order for the supply of Works, as set out in the Client's purchase order form, or the Client's written acceptance of Sinewave's quotation (as the case may be)
- “Sinewave”** means Sinewave Energy Solutions Limited (company number: 09585850);
- “Site”** means the property at which the Works are to be provided by Sinewave.
- “Specification”** the description or specification for the Works provided in writing by Sinewave to the Client;
- “Third Party Consent”** means any permission, consent, approval, licence, easement or anything similar which is required for the performance of the Works.
- “Works”** means the connection works, goods and/or services as set out in the Specification which are to be provided by the Contractor in accordance with this agreement.
- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- “writing”** or **“written”** includes fax and email;
 - a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - “these Terms and Conditions”** is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
 - a reference to a clause is a reference to a clause of these Terms and Conditions; and
 - a **“Party”** or the **“Parties”** refer to the parties to the Contract (and this includes its successors and permitted assigns).
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

2. Formation of contract

- 2.1 The Order constitutes an offer by the Client to purchase services in accordance with these Terms and Conditions.
- 2.2 The Order shall only be deemed to be accepted when Sinewave issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. Sinewave's Obligations

- 3.1 With effect from the Commencement Date, the Sinewave shall, throughout the term of the Contract, carry out the Works in accordance with the Specification in all material respects.
- 3.2 Sinewave shall carry out the Works with reasonable skill and care.
- 3.3 Sinewave shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the Specification. If those instructions will extend the scope of the Works then clause 5 shall apply.
- 3.4 Sinewave shall comply with
- all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the Works (including

the CDM Regulations);

- (b) all health and safety rules and regulations and any other reasonable security requirements which apply at the Site (provided that Sinewave is notified of such rules); and
- (c) the terms of any Third Party Consent (subject to the Client's compliance with clause 4.3)

3.5 If agreed by the Client from time to time, Sinewave may, in relation to certain specified matters related to the Works, act on the Client's behalf.

3.6 Sinewave shall use all reasonable endeavours to meet any performance dates specified in Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Works.

3.7 Sinewave shall use all reasonable endeavours to meet the acceptance criteria for Adoption provided by the Network Operator to Sinewave in writing.

4. Client's Obligations

4.1 The Client shall provide all pertinent information to Sinewave that is necessary for Sinewave's performance of the Works. The Client shall provide any such information as soon as practicable after receipt of a request from Sinewave.

4.2 In the event Sinewave requires the decision, approval, consent or any other communication from the Client in order to continue with the performance of the Works or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.

4.3 If any Third Party Consents are required, it shall be the Client's responsibility (at its cost) to obtain such Third Party Consents in advance of the provision of the Works (or the relevant part thereof) unless we have agreed in writing to obtain such Third Party Consent. The Client shall provide Sinewave with accurate copies of any Third Party Consents as soon as practicable after they have been obtained from the relevant third party.

4.4 The Client shall

- (a) grant (or procure that access is granted to) Sinewave such access to the Site as Sinewave requires for the performance of the Works;
- (b) inform Sinewave of all health and safety rules and regulations and any other reasonable security requirements that apply at the Site;
- (c) comply with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to their obligations under the Contract;
- (d) to the extent that any third parties are also engaged to provide services at the Site, procure that such third parties do not disrupt or interfere with the Works;
- (e) supply any equipment and/or materials to be provided the Client as set out in the Specification (or a Change Order) at the times and locations agreed between the Client and Sinewave from time to time.

5. Variations

5.1 Either Party may propose changes to the scope or execution of the Works but no proposed changes shall come into effect until a relevant Change Order has been signed by both Parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Works;
- (b) the Fees;
- (c) the programme for the Works; and
- (d) any of the other terms of the Contract.

5.2 If Sinewave wishes to make a change to the Works it shall provide a draft Change Order to the Client.

5.3 If the Client wishes to make a change to the Works:

- (a) it shall notify Sinewave and provide as much detail as Sinewave reasonably requires of the proposed changes, including the timing of the proposed change; and
- (b) Sinewave shall, as soon as reasonably practicable after receiving the information at Clause 8.3(a), provide a draft Change Order to the Client.

5.4 Subject to clause 5.5, if the parties:

- (a) agree to a Change Order, they shall sign it and that Change Order shall amend the Contract accordingly; or

- (b) are unable to agree a Change Order, either Party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 22 (Dispute resolution).

5.5 If the changes set out in the Change Order require the prior approval of the Network Operator (or any other third party interested in the Works) then the Change Order shall not be signed or take effect until such approval has been obtained.

5.6 The Parties agree and acknowledge that a Change Order will be required in the following (non-exhaustive) circumstances:

- (a) the physical conditions at the Site are materially different to those which could have been reasonably foreseen by Sinewave prior to the acceptance of the Order (including, without limitation, the discovery of any obstruction or any archaeological matters);
- (b) restrictions are imposed on the number of days or hours in which Sinewave can perform the Works;
- (c) the Network Operator requires a change to the Works;
- (d) the terms of any Third Party Consent impose conditions on Sinewave which could not have been reasonably foreseen by Sinewave prior to the acceptance of the Order;
- (e) any information provided by the Client (or Network Operator) prior to acceptance of the Order was inaccurate;
- (f) the Client failed to disclose information in its possession prior to acceptance of the Order which is relevant to Sinewave's ability to comply with the terms of the Contract

6. Extension of time

6.1 If Sinewave's performance of its obligations under the Contract is prevented or delayed by:

- (a) any act or omission of the Client, its agents, subcontractors, consultants or employees;
- (b) any act or omission of the Network Operator its agents, subcontractors, consultants or employees;
- (c) the Site not being ready for performance of the Works;
- (d) a request for a Change Order submitted by the Client;
- (e) any of the circumstances listed in clause 5.6;

then, without prejudice to any other right or remedy it may have, Sinewave shall be allowed an extension of time to perform its obligations equal to the delay caused by the relevant event.

7. Fees, Payment and Records

7.1 Sinewave shall invoice the Client for Fees in accordance with the Specification.

7.2 The Client shall pay each invoice submitted by Sinewave within 30 Business Days of date of each invoice.

7.3 All payments made by the Client shall be made in GBP in cleared funds to such bank in England as Sinewave may from time to time notify to the Client. Where any payment is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.

7.4 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Sinewave to the Client, the Client shall, on receipt of a valid VAT invoice from Sinewave, pay to Sinewave such additional amounts in respect of VAT.

7.5 If the Client fails to make a payment due to Sinewave under the Contract by the due date, then, without limiting Sinewave's remedies, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum. Interest under this clause 7.5 will accrue each day at:

- (a) 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0% ("the Contractual Rate") before judgment; and
- (b) the applicable statutory interest rate after judgment (unless such interest rate is less than the Contractual Rate in which case the Contractual Rate shall apply after judgment).

7.6 If the Client fails to make a payment due to Sinewave under the Contract by the due date and such non-payment is not remedied within 5 working days, then (without prejudice to any other right or remedy that it may have) Sinewave may suspend performance of the Works until the non-payment is remedied.

8. Liability, Indemnity and Insurance

- 8.1 Sinewave shall ensure that it has in place at all times suitable and valid insurance policies that shall include public liability insurance.
- 8.2 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence; and
 - (b) fraud or fraudulent misrepresentation.
- 8.4 Subject to clause 8.3, the following types of loss are wholly excluded by Sinewave and it shall not be liable to the Client in respect of them:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 8.5 Subject to clause 8.3, Sinewave's total liability to the Client within any contract year shall not exceed the cap, and:
- (a) the **cap** means the sum equal to 100% of the total charges in the contract year in which the breaches occurred;
 - (b) a **contract year** means a 12-month period commencing with the date of the Contract or any anniversary of it; and
 - (c) the **total charges** means all sums paid by the Client to Sinewave under the Contract.
- 8.6 Sinewave shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by Sinewave.
- 8.7 Sinewave has given commitments as to compliance of the Works with relevant specifications. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.8 The Client shall indemnify Sinewave against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Sinewave) caused by the Client or its agents or employees.
- 8.9 Any delay in the provision of the Works resulting from the Client's failure or delay in complying with any of the provisions of clause 4 shall not be the responsibility or fault of Sinewave.

9. Confidentiality

- 9.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 9.2.
- 9.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 9; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its

obligations under or in connection with the Contract.

10. Force Majeure

10.1 In this clause 10, a **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition[, or failing to grant a necessary licence or consent];
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts;
- (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (i) interruption or failure of utility service.

10.2 Provided it has complied with clause 16.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

10.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

10.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than two months, the party not affected by the Force Majeure Event may terminate this Agreement by giving two weeks' written notice to the Affected Party. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Contract.

11. Term and Termination

11.1 The Contract shall come into force on the agreed Commencement Date and shall continue until the Works have been completed, unless terminated earlier in accordance with clause 11.2.

11.2 Either Party may immediately terminate the Contract by giving written notice to the other Party if:

- (a) any sum owing to that Party by the other Party under any of the provisions of the Contract is not paid on the due date and such non-payment is not corrected within 10 Business Days of being notified in writing to do so;
- (b) the other Party commits any other breach of any of the provisions of the Contract and, if the breach is capable of remedy, fails to remedy it within 20 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- (c) the other party takes or has taken against it any step or action in connection with it entering into 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 substantially the whole of its business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

12. Effects of Termination

12.1 Upon the termination of the Contract for any reason:

- (a) any sum owing by either Party to the other under any of the provisions of the Contract shall become immediately due and payable;
- (b) Sinewave may issue an invoice in respect of services performed or goods delivered for which no invoice has been submitted and the Client shall have thirty (30) days from the date of that invoice in which to pay the amount due;
- (c) all clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Contract shall remain in full force and effect;
- (d) termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Contract which existed at or before the date of termination;
- (e) each Party shall (except to the extent referred to in clause 7) immediately cease to use, either directly or indirectly, any confidential information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

12.2 In the event that the Client cancels or postpones any services which have been scheduled for a particular date with less than 48 hours' notice then the Client shall indemnify Sinewave on demand against all costs and expenses arising from such cancellation / postponement (including the cost of labour which cannot be employed elsewhere).

13. Waiver & Variation

13.1 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 right or remedy.

13.2 No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

13.3 No variation of the Contract shall be effective unless it is agreed in writing and signed by the Parties (or their authorised representatives).

14. Set-Off

14.1 Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Contract or any other agreement at any time.

15. Assignment and Sub-Contracting

15.1 Subject to clause 15.2, the Contract shall be personal to the Parties and neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

15.2 Sinewave shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors.

16. Relationship of the Parties

16.1 Nothing in the Contract shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Contract.

17. Non-Solicitation

17.1 Neither Party shall, for the duration of the Contract and for a period of twelve months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Contract without the express written consent of that Party.

18. Third Party Rights

18.1 No part of the Contract shall confer rights on any third parties under the Contracts (Rights of Third Parties) Act 1999.

19. Notices

19.1 All notices under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

19.2 Notices shall be deemed to have been duly given:

- (a) when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

- (b) when sent, if transmitted by fax or e-mail; or
- (c) on the second business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- (d) on the tenth business day following mailing, if mailed by airmail, postage prepaid.

19.3 In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

20. Entire Agreement

20.1 The Contract contains the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each Party acknowledges that, in entering into the Contract, it does not rely on and shall have no remedy in relation to any representation, warranty or other provision (whether made innocently or negligently) that is not set out in the Contract.

21. Severance

21.1 In the event one or more of the provisions of the Contract is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Contract. The remainder of the Contract shall be valid and enforceable.

22. Dispute Resolution

22.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Contract through negotiations between their appointed representatives who have the authority to settle such disputes.

22.2 If negotiations under sub-clause 22.1 do not resolve the matter within 30 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (the “**ADR Procedure**”).

22.3 If the ADR Procedure under sub-clause 22.2 does not resolve the matter within 14 days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

22.4 The seat of the arbitration under sub-clause 22.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

22.5 Nothing in this clause 22 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

22.6 The decision and outcome of the final method of dispute resolution under clause 22 shall be final and binding on both Parties (except in the event of manifest fraud or error).

23. Law and Jurisdiction

23.1 The Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

23.2 Subject to the provisions of clause 22 of, any dispute, controversy, proceedings or claim between the Parties relating to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.