

General Terms and Conditions for MINOR SERVICES of RWE Renewables

Last updated 10.12.2019

Scope

This document applies to RWE Renewables. Therefore, where the document refers to 'RWE' it means RWE Renewables.

Definitions

- 1.1 In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them:
- 1.1.1 "Conditions" means these Conditions of Contract.
- 1.1.2 "Contract" means the agreement between the Employer and the Contractor for the execution of the Services incorporating the Conditions, Specification, priced and completed Schedules, Tender, Letter of Acceptance and such further documents as may be expressly incorporated by the Letter of Acceptance.
- 1.1.3 "Contract Period" means the period stated in the Specification during which the Services are to be provided.
- 1.1.4 "Contract Price" means the sum stated in the Letter of Acceptance (either as a fixed lump sum or the sum of tendered rates) as payable to the Contractor for the provision of the Services.
- 1.1.5 "Contractor" means the person whose tender has been accepted by the Employer and the legal successors in title to the Contractor but not (except with the consent of the Employer) any assignee of the Contractor.
- 1.1.6 "Contractor's Property" means all appliances or things of whatsoever nature used in undertaking the Services or hired to the Employer as an integral part of the Services.
- 1.1.7 "Employer" means RWE Renewables (or the company within the RWE Group which is named as the contracting entity in the Purchase Order) and the legal successors in title to the Employer.
- 1.1.8 "Letter of Acceptance" means the formal acceptance by the Employer of the Tender incorporating any adjustments or variations to the Tender agreed between the Employer and the Contractor.
- 1.1.9 "Schedule of Prices" means the completed and priced Schedule of Prices, or any part or individual schedule thereof, submitted by the Contractor with his Tender and forming a part of the Contract documents.
- 1.1.10 "Services" means the services described in the Specification and includes all necessary items of plant, goods and consumables and where the context requires the hire to the Employer of Contractor's Property.
- 1.1.11 "Site" means the place or places, provided or made available by the Employer, where the Services are to be performed by the Contractor together with so much of the area surrounding the same as the Contractor shall with the consent of the Employer use in connection with the Services otherwise than merely for the purposes of access.
- 1.1.12 "Specification" means the specification of the Services included in the Contract and any modification thereof made under Clause 12.
- 1.1.13 "Subcontractor" means any person (other than the Contractor) named in the Contract for any part of the Services, or any person to whom any part of the Contract has been subcontracted with the consent of the Employer, and the Subcontractor's legal successors in title but not any assignee of the Subcontractor.
- 1.1.14 "Tender" means the Contractor's priced offer to the Employer for the performance of the Services.
- 1.1.15 "Defects Liability Period" means one year from completion of the Services, during which the Contractor is responsible for making good defects and damage in accordance with Clause 19.
- 1.1.16 "Parties" means the Employer and the Contractor, and Party shall mean either of them as the context allows.

Interpretation

1.2 The headings and titles in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or

construction of the Contract.

Words importing persons or parties shall include firms and corporations and any organisation having legal capacity.

Words importing the singular only also include the plural and vice versa where the context requires.

Wherever in the Contract provision is made for a communication to be "written" or "in writing" this means any hand-written, type-written or printed communication, including facsimile transmission.

In these Conditions "day" means calendar day and "year" means 365 days.

Notices, Consents and Approvals

1.3 Wherever in the Contract provision is made for the giving of notice, consent or approval by any person, such consent or approval shall not be unreasonably withheld. Unless otherwise specified, such notice, consent or approval shall be in writing and the word "notify" shall be construed accordingly.

General Obligations

Assignment

2.1 The Contractor shall not assign the Contract or any part of his obligations under the Contract. A charge in favour of the Contractor's bankers of any monies due under the Contract shall not be considered an assignment.

Subcontracting

3.1 The Contractor shall not subcontract the whole of the Services.

Except where otherwise provided by the Contract the Contractor shall not subcontract any part of the Services without the prior consent of the Employer.

The Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents or employees as fully as if they were the acts, defaults or neglects of the Contractor, his agents or employees.

Priority of Contract Documents

4.1 Unless otherwise provided in the Contract the priority of the Contract documents shall be as follows:

- (a) The Letter of Acceptance
- (b) The Conditions of Contract
- (c) Authorised Amendments to the Tender
- (d) The Specification
- (e) Any other documents forming part of the Contract, including the Contractor's Tender.

Contractor's Obligations

5.1 The Contractor shall, in accordance with the Contract, with due care and diligence, provide the Services during the Contract Period. The Contractor shall also provide all necessary Contractor's Property, superintendence, labour and, except as stated in the Specification, all necessary facilities therefore.

Sufficiency of Contract Price

6.1 The Contractor shall be deemed to have satisfied himself on and taken account of in his Tender:

- (a) all the conditions and circumstances affecting the Contract Price,
- (b) the possibility of carrying out the Services as described in the Contract,

The Contractor shall not be responsible for the accuracy of information given in writing by the Employer but shall be responsible for his interpretation of information received from whatever source.

Contractor's Representative

7.1 The Contractor shall employ one or more competent representatives to superintend the carrying out of the Services on Site.

Any instruction or notice which the Employer gives to the Contractor's representatives shall be deemed to have been given to the Contractor.

Objection to Contractor's Employees

7.2 The Contractor shall, upon the Employer's written instruction, remove from the Services any person employed by him in the provision of the Services, who misconducts himself or is incompetent or negligent, or for any other reason as notified by the Employer.

Safety Precautions

8.1 The Contractor shall in carrying out its obligations under this Contract understand and comply at its own cost with all legislative and regulatory requirements and ensure compliance with any relevant site specific requirements documents, policies and procedures made known to it by the Employer.

8.2 Where applicable, the Contractor shall comply with the Construction (Design and Management) Regulations 2007 (CDM) for the duration of the Contract where such regulations apply, and the Contractor shall take due consideration of the provisions of the CDM Regulations when considering Health and Safety requirements, and shall inform the Health and Safety Executive of any appointments made in accordance with such Regulations.

Access to and Possession of the Site

9.1 The Employer shall in reasonable time grant the Contractor access to and possession of the Site, which may, however, not be exclusive to the Contractor.

The Employer shall to the extent stated in the Specification provide means of access for the delivery of all Contractor's Property to the Site.

Manner of Execution

10.1 All work to be done shall be executed in the manner set out in the Contract.

Where the manner of manufacture and execution is not set out in the Contract, the work shall be executed in a proper and workmanlike manner in accordance with recognised good practice.

Delay in Completion

11.1 If a date is fixed in the Specification or the individual written instruction for the completion of any work and the Contractor fails to complete the Services by that date the Contractor shall pay to the Employer, or the Employer shall deduct from monies due to the Contractor, an amount for each day between the date fixed for completion of the Services and the date the Services are actually completed and the said payment or deduction shall be in full satisfaction of the Contractor's liability for the said failure.

11.2 Such amount shall be agreed between the Parties and will represent a genuine pre-estimate of the Employer's estimated losses. Such amount will either be listed in an attached Schedule or detailed in the Letter of Acceptance

11.3 The aggregate of amounts so paid or deducted shall not exceed the value of the Contract.

Variations

12.1 The Employer may by Variation Order to the Contractor at any time during the Contract Period, instruct the Contractor to alter, amend, omit, add to or otherwise vary any part of the Services.

Variation Order Procedure

12.2 If the Employer decides that the variation shall be carried out, he shall issue a Variation Order clearly identified as such in accordance with the Contractor's submission or as modified by agreement.

Where rates are not contained in the said Schedule, the amount shall be such as is in all the circumstances reasonable. Due account shall be taken of any over- or under-recovery of overheads by the Contractor in consequence of the variation.

On receipt of a Variation Order, the Contractor shall forthwith proceed to carry out the variation and be bound to these Conditions in so doing as if such variation was stated in the Contract.

Payment

13.1 The Contractor will submit invoices at the end of each calendar month for completed Services.

13.2 The Employer shall make payment to the Contractor at his principal place of business within 30 days from the date of a properly submitted invoice.

Damage to Property and Injury to Persons

Contractor's Liability

14.1 Except as provided under Sub-Clause 14.3, the Contractor shall be liable for and shall indemnify the Employer against all losses, expenses and claims in respect of any loss of or damage to physical property, death or personal injury occurring to the extent caused by negligence or breach of statutory duty of the Contractor, his Subcontractors or their respective employees and agents until the expiry of the Defects Liability Period.

Employer's Liability

14.2 The Employer shall be liable for and shall indemnify the Contractor against all losses, expenses or claims in respect of loss of or damage to any physical property or of death or personal injury whenever occurring, to the extent caused by the act, neglect or omission or breach of contract or of statutory duty of the Employer or other contractors engaged by the Employer or of their respective employees or agents.

Accidents

14.3 The Contractor shall be liable for and shall indemnify the Employer against all losses, expenses or claims arising in connection with the death of or injury to any person employed by the Contractor or his Subcontractors for the purposes of the Service, unless caused by any acts or defaults of the Employer or other contractors engaged by the Employer or by their respective employees or agents. In the latter cases the Employer shall be liable for and shall indemnify the Contractor against all losses, expenses and claims arising in connection therewith.

Limitations of Liability

Liability for Indirect or Consequential Damage

15.1 Neither Party shall be liable to the other for any loss of profit, loss of use, loss of production, loss of contracts or for any indirect or consequential damage that may be suffered by the other.

Insurance

Third Party Liability

16.1 The Contractor shall insure against liability to third parties for any death or personal injury and loss of or damage to any physical property arising out of the performance of the Contract until the expiry of the Defects Liability Period.

Such insurance shall be effected before the Contractor begins any work on the Site and the insurance shall be for not less than £5,000,000.

The terms of the policy shall include a provision whereby, in the event of any claim being made against the Employer in respect of which the Contractor would be entitled to indemnity under the policy, the insurers will indemnify the Employer against any costs, charges and expenses in respect thereof.

Employees

16.2 The Contractor shall insure and maintain insurance against his liability under Sub-Clause 14.3.

General Requirements of Insurance Policies

16.3 The Contractor shall:

- (a) whenever required by the Employer produce the policies or certificates of any insurance which he is required to effect under the Contract together with receipts for the premiums, and
- (b) effect all insurance's for which he is responsible with an insurer and in terms approved by the Employer.

Remedies on the Contractor's Failure to Insure

16.4 If the Contractor fails to produce evidence of insurance cover as stated in Sub-Clause 16.3 (a) then the Employer may effect and keep in force such insurance. Premiums paid by the Employer for this purpose shall be deducted from the Contract Price.

Default

Notice of Default

17.1 If the Contractor is not performing the Services in accordance with the Contract or is neglecting to perform his obligations thereunder so as to affect the quality of the Services, the Employer may give notice to the Contractor requiring him to make good such failure or neglect within such period as shall be reasonable in the circumstances.

Contractor's Default

17.2 If the Contractor:

- (a) has failed to comply within a reasonable time with a notice under Sub-Clause 17.1, to the Employer's reasonable satisfaction, or
- (b) assigns the Contract or subcontracts the whole, or part, of the Service without the Employer's written consent except as provided under Sub-Clause 3.1, or
- (c) becomes bankrupt or insolvent, has a receiving order made against him or compounds with his creditors, or carries on business under a receiver, administrator, trustee or manager for the benefit of his creditors or goes into liquidation, or
- (d) is in breach of his obligations under the Contract in respect of his obligations under Clauses 5.1, 8.1, 8.2 and 10.1 in such a manner as to cause the Employer fundamentally to lose all trust in the Contractor's ability to perform the Contract to completion, the Employer may terminate the Contract forthwith.

Any such termination shall be without prejudice to any other rights or powers of the Employer or the Contractor under the Contract.

The Employer may upon such termination complete the Services himself or by any other contractor.

The Employer or such other contractor may use for such completion any Contractor's Property which is on the Site and the Employer shall pay or allow to the Contractor a fair price for such use. Otherwise the Contractor will be granted a reasonable period to remove Contractor's Property from the Site.

Valuation at Date of Termination

17.3 The Employer shall, as soon as possible after such termination, certify the value of the Service and all sums then due to the Contractor as at the date of termination in accordance with Clause 17.2.

Payment after Termination

17.4 The Employer shall not be liable to make any further payments to the Contractor until the Contract has been completed. When the Services are so complete, the Employers shall be entitled to recover from the Contractor the extra costs, if any, of completing the Services after allowing for any sum due to the Contractor under Sub-Clause 17.3. If there is no such extra cost the Employer shall pay any balance due to the Contractor.

If the Employer is unable to obtain payment of extra costs from the Contractor, the Employer shall be entitled, (and is hereby authorised by the Contractor) to sell any Contractor's Property owned by the Contractor or by any firm or Corporation in which the Contractor has a controlling interest and apply the net proceeds in or towards the satisfaction of such extra costs.

Employer's right to terminate

18.1 The Employer may terminate the Contract at any time by the provision of one month's written notice to the Contractor.

Defects after Completion

Defects Liability Period

19.1 A Defects Liability Period of 12 months shall apply to all plant, spares, consumables and materials provided under the Contract.

The Defects Liability Period shall commence on the date that such plant, spares, consumables or materials were installed, incorporated or provided under the Contract.

Making Good Defects

19.2 The Contractor shall be responsible for making good any defect to any plant, spares, consumables or materials during the course of the Contract which may appear or occur during the Defects Liability Period and which arises from, either:

- (a) any defective materials, workmanship or design, or
- (b) any act or omission of the Contractor during the Defects Liability Period.

The Contractor shall make good the defect or damage as soon as practicable and at his own cost.

Extension of Defects Liability Period

19.3 The provisions of this Clause shall apply to all replacements or renewals carried out by the Contractor as if the replacements and renewals had been completed on the day they were provided.

The Defects Liability Period for such plant, spares, consumables or materials shall be extended by a period equal to the period during which such plant, spares, consumables or materials cannot be used by reason of a defect or damage.

In neither case shall the Defects Liability Period be extended by more than three years.

Third Party Rights

20.1 The Contracts (Right of Third Parties) Act 1999 shall not apply to this Contract. No person or organisation who is not a Party to this Contract (including any employee, officer, agent, representative or Subcontractor of either Party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of the Contract which expressly or by implication confers a benefit on that person without the express prior written agreement in writing of the Parties. Such agreement must refer to this Clause.

New Currency

21.1 The Employer shall have the right following notification to the Contractor to change the currency of the Contract in the event that the currency in the United Kingdom is replaced, changed, supplemented or amended such that a new currency becomes legal tender. All amounts specified in the Contract, any payments due, becoming due or accruing at the time of transfer to the new currency shall be converted to the new currency at the official conversion rate notified by the prevailing Government.

The Contractor shall not be entitled to claim a variation to the Contract or any additional costs associated with the change of currency. The obligations of the Parties shall be otherwise unaffected.

Non-Exclusivity & Work Volumes

Non-Exclusivity

22.1 The Contractor does not have any exclusive rights to carry out the specified Services or works of a similar nature, and no such exclusivity is implied or given by the Employer.

Work Volumes

22.2 The Employer does not afford or imply that any specific or guaranteed level of workload or turnover will be provided to the Contractor during the Contract Period.

TUPE

23.1 If at the date of expiry or termination (however caused) of this Contract in whole or in part (the "Termination Date") the TUPE Regulations apply in respect of any of the employees of the Contractor (the "Transferring Employees") the Contractor hereby covenants and undertakes to indemnify and keep indemnified the Employer (for itself and as trustee for any other company, organisation, entity or person who may replace the Contractor in the supply of some or all of the Services) and to hold the Employer and any other company, organisation, entity or person who may replace the Contractor in the supply of some or all of the Services) at all times harmless from and against all and any Losses, damages, fines, penalties, compensation, payments (including payments arising under statute) costs and expenses (including legal expenses on an indemnity basis) and any other liabilities whatsoever, suffered or incurred by the Employer whether directly or indirectly as a result of any claim, act or demand made by:-

- (a) any employees or former employees of the Contractor or any agent, supplier, sub-contractor or contractor of the Contractor where such claim or claims arise from any act, fault or omission of the Contractor or any agent, supplier, sub-contractor or contractor of the Contractor occurring on or prior to the Termination Date (or the commencement of the Transferring Employees' employment with the Employer or any new contractor, if later);
- (b) by any trade union, staff association or other body or person representing employees of the Contractor or any agent, supplier, sub-contractor or contractor of the Contractor arising from or connected with any failure by the Contractor or any agent, supplier, sub-contractor or contractor of the Contractor to comply with its legal obligations to such trade unions, staff associations or other body or person representing employees.

23.2 The Contractor will (and will procure that any contractor, sub-contractor, supplier or agent of the Contractor will) provide the Employer and any other company, organisation, entity or person who may replace the Contractor or any agent, supplier, sub-contractor or contractor of the Contractor in the supply of some or all of the Services and any other company, organisation, entity or person as directed by the Employer full co-operation and assistance in the conduct of any claims covered by an indemnity under clause 23.1.

23.3 Each Party undertakes, if a claim, demand or action is made or threatened that may give rise to a claim for indemnity under clause 23.1 then that Party shall as the case may be:

- a) notify the indemnifying Party of such a claim, demand or action in writing within 5 business days of it first being made or threatened or if not reasonably practicable to do so then as soon as reasonably practicable thereafter;
- b) give the indemnifying Party promptly all reasonable co-operation, assistance and information which may be relevant to the claim, demand or action;
- (c) give the indemnifying Party conduct of the claim, demand or action; and
- (d) not admit, defend, compromise, negotiate or settle the claim or action without the consent of the indemnifying Party (such consent not to be unreasonably withheld) in writing.

23.4 The Contractor shall within 21 days of receiving a request from the Employer provide full, accurate and up-to-date details of all material particulars of employment of those employees engaged in the Services (including but not limited to the number of staff employed, the rate of pay, details of all remuneration, hours of work, length of service, holiday entitlement and details of pensions benefits and other outgoings) either to the Employer or direct to appropriate third parties with an interest in tendering for any renewable contract.

23.5 The Contractor hereby warrants that it has secured all relevant Consents be it statutory or otherwise for the purpose of complying with its obligations under this Clause 23.

23.6 The Contractor will (and will procure that its contractors, sub-contractors, suppliers, agents of the Contractor engaged in connection with the Services will) not during the period of six calendar months immediately preceding the expiry date of the Contract, without the prior written consent of the Employer:-

- (a) other than in the ordinary course of business terminate the employment of any of those employees who work wholly or mainly on the Contract ("Relevant Employees");
- (b) other than in the ordinary course of business, increase the number of Relevant Employees by more than 5%;
- (c) relocate or reassign to duties unconnected with the Contract any Relevant Employee who performs a technical or managerial role or other role previously designated by The Employer as being of strategic importance ("a Strategic Role");
- (d) relocate or reassign to a Strategic Role any person who was not prior to that relocation or reassignment a Relevant Employee;
- (e) make any material change to the remuneration of other terms and conditions of employment of any Relevant Employee;
- (f) make any statement to Relevant Employees concerning the termination or expiry of the Contract and/or the period following termination or expiry, provided that nothing in this Clause 23.6 shall prevent the Contractor (or any of its contractors, sub-contractors, suppliers and agents engaged in connection with the Services) from informing and/or consulting Relevant Employees about matters affecting them as required by the Employment Rights Act 1996.

23.7 The Contractor shall (and shall in respect of any contractor, sub-contractor, supplier or agent engaged in the provision of some or all of the Services procure that any contractor, sub-contractor, supplier and agent shall) not at any time without the consent of the Employer employ or engage any person other than an Employee in the provision of the Services and the Contractor shall be responsible for and shall indemnify the Employer (for itself and as trustee for any other company, organisation, entity or person who may replace the Contractor in the supply of some or all of the Services) against all Losses, claims, actions, proceedings, awards, emoluments, outgoings (including without limitation pensions contributions and benefits) and other liabilities whatsoever arising out of or in connection with the employment (during any period and by any person) and termination of employment (at any time and by any person) of any person who is engaged in the Services without the consent of the Employer and who is or becomes a member of the Electricity Supply Pension Scheme.

24. not used

Contractor's Use of Employer's Drawings

25.1 The Employer's Drawings, Specification and other information submitted by the Employer to the Contractor shall remain the property of the Employer. They shall not, without the consent of the Employer, be used, copied or communicated to a third party by the Contractor unless necessary for the purposes of the Contract

Errors by Employer

25.2

- (a) The Contractor shall diligently check and verify the Employer's Drawings and all other written information supplied by the Employer including without limitation the Specification and any information provided by the Employer.
- (b) The Employer does not warrant or guarantee the accuracy of any Employer's Drawings or other such information supplied by the Employer unless such warranty or guarantee is expressly given to the Contractor by the Employer.
- (c) The Contractor shall promptly notify the Employer in writing of any errors discovered in the Employer's Drawings and other such information supplied by the Employer, and shall promptly rectify at his own expense any such errors, discrepancies or omissions.

Claims

Procedure

26.1 In any case where under these Conditions there are circumstances which the Contractor considers entitle him to claim additional payment, the Contractor shall as a condition of such entitlement maintain detailed records of all payments and costs incurred under the

Contract and grant access to the Employer to inspect the same for validation purposes and the Contractor shall:

- (a) if he intends to make any claim for additional payment give to the Employer notice of his intention to make such claim within 14 days after the said circumstances became known to the Contractor stating the reasons for his claim, and
- (b) as soon as reasonably practical after the date of such notice submit to the Employer full and detailed particulars of his claim but not later than 42 days after such notice unless otherwise agreed by the Employer.

Assessment

26.2 When the Employer has received full and detailed particulars of the Contractor's claim in accordance with Sub-Clause 26.1 and such further particulars as he may reasonably have required he shall after due consultation with the Contractor determine whether the Contractor is entitled to additional payment and notify the parties accordingly.

The Employer may reject any claim for additional payment which does not comply with the requirements of Sub-Clause 26.1, inclusive of the requirement to submit the said notice and the full claim details within the stated time periods.

The existence of any claim from the Contractor to the Employer shall not release the Contractor from following any Employer's instruction nor shall it give the Contractor the right to withdraw his labour or withhold his performance under the Contract.

Confidentiality

27.1 Each Party shall keep secret and treat as confidential all information obtained from the other which is either stated to be confidential or could reasonably be regarded as confidential and shall not disclose such information to any person other than its employees, agents or Subcontractors where such disclosure is required for the performance of the Party's obligations under this Contract. This clause shall not extend to information which was already in the lawful possession of a Party prior to this Contract or which is already public knowledge or becomes so subsequently (other than as a result of a breach of this clause) or which is trivial or obvious. The obligations of confidentiality under this clause shall survive any termination of this Contract.

Applicable Law

28.1 The law which is to apply to the Contract and under which the Contract is to be construed is English Law and the jurisdiction of the English courts shall apply.