



Terms & Conditions

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Purpose

This document sets out the terms and conditions of business with The PES Ltd.

Revision History

Version	Date of issue	Author	Date for review
001	August 26	Neil Ingham	

Terms and Conditions of Business

1. Interpretation

- 1.1. These Terms (together with any applicable quotation, fee proposal and/or other terms expressly agreed in writing) are the terms on which The PES companies listed in clause 13.1 provide Services to their Clients. Different elements in relation to any particular project may be provided by different PES companies as summarised in clause 13.1. All references in these terms to “PES” are deemed to refer to the applicable PES company (or companies).
- 1.2. The definitions and rules of interpretation in clause 13 apply in these Terms.

2. Basis of Contract

- 2.1. The Order constitutes an offer by the Client to purchase Services in accordance with these Terms. PES is free to accept or reject each Order at its absolute discretion. The Contract shall only be deemed to be made when PES confirms acceptance of the Order or commences delivery of the Services, at which point and on which date the Contract shall come into existence (“Commencement Date”).
- 2.2. These Terms apply to the Contract to the exclusion of any other terms that the Client may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.3. Any samples, drawings, descriptive matter or advertising issued by PES are issued or published for the sole purpose of giving an approximate idea of the Services described in them, and shall not form part of the Contract or have any contractual force.
- 2.4. Any quotation given by PES shall not constitute an offer and will remain valid for a period of 60 Business Days from its date of issue.
- 2.5. If there is any conflict or inconsistency between any of the provisions in these Terms and the provisions of an Order, the provisions of these Terms prevail.

3. Supply of Services

- 3.1. PES shall supply the Services to the Client from the Commencement Date, with reasonable care and skill.
- 3.2. PES shall use its reasonable endeavours to meet any agreed or target performance dates, but any such dates shall be estimates only and time shall not be of the essence for performance of any of PES’ obligations in the Contract.

4. Client's Obligations

- 4.1. PES reserves the right to amend the Scope of Works if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and PES shall notify the Client in any such event.
- 4.2. The Client shall:
 - 4.2.1. ensure that any information it provides to PES is complete and accurate;
 - 4.2.2. co-operate with PES in all matters relating to the Services;
 - 4.2.3. provide PES, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by PES;
 - 4.2.4. obtain and maintain all necessary permissions and consents which may be required for the Services before the date on which the Services are to start;

- 4.2.5. keep all materials, equipment, documents and other property of PES (“PES Materials”) which are at the Client's premises in safe custody at its own risk, maintain them in good condition until collected by or returned to PES, and not dispose of or use them other than in accordance with PES's written instructions or authorisation.
- 4.3. If PES's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (“Client Default”):
 - 4.3.1. without limiting or affecting any other right or remedy available to it, PES shall have the right to suspend performance of the Services until the Client remedies the Client Default, and may rely on the Client Default to relieve it from the performance of any of its obligations (in each case to the extent that the Client Default prevents or delays PES's performance of any of its obligations);
 - 4.3.2. PES shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from PES's failure or delay to perform any of its obligations as set out in this clause 4.3; and
 - 4.3.3. the Client shall reimburse PES on written demand for any costs or losses sustained or incurred by PES arising directly or indirectly from the Client Default.

5. Fees and Payment

- 5.1. The Fees for the Services shall be as set out in the relevant quotation or fee proposal. In addition, PES may charge the Client for any expenses and/or additional costs reasonably incurred by the individuals whom PES engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses. PES may charge for the cost of services provided by third parties and required by PES for the performance of the Services.
- 5.2. The Client shall pay each invoice submitted by PES in full within 14 days of the date of the invoice. Time for payment shall be of the essence of the Contract.
- 5.3. All amounts payable by the Client under the Contract are exclusive of any value added tax chargeable from time to time (“VAT”). Any applicable VAT shall be payable in addition to the Fees on receipt of a valid VAT invoice from PES, at the same time as payment of Fees is due.
- 5.4. If the Client fails to make any payment due to PES by the due date, then (without limiting PES's remedies under clause 9) the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, at the statutory default rate from time to time.
- 5.5. All amounts due to PES shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.6. If the Client uses any form of AI Technology to review the Services provided by PES and the comments are erroneous, then PES reserves the right to charge the Client an additional amount for all reasonable time and costs incurred (“Additional Fees”) responding to the erroneous outputs from AI Technology. The Additional Fees will be calculated on a time basis using PES’ fee rates for each individual person as set out in the Order. PES shall ensure that its personnel complete time sheets to record time spent on the Services, and PES shall indicate the additional time spent per individual in its invoice(s).

6. Intellectual Property Rights

- 6.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by PES.
- 6.2. The Client grants (or will procure the grant) to PES a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to PES for the purpose of providing the Services to the Client.

7. Data Protection

- 7.1. PES and the Client shall at all times comply with their obligations under Data Protection Requirements. PES will ensure that personal data it controls or processes remains confidential. Personal data will only be used for a permitted purpose for a reasonable time and, subject to any legal or regulatory requirements, will be deleted or corrected within a reasonable time following a written request by the Client.
- 7.2. PES may use data it controls or processes in connection with the Client to create or update records held by PES relating to any matter(s), including without limitation for the purpose of product, market or credit analysis, and statistical compilation. PES will not disclose personal data to third parties without first obtaining the consent of the Client unless there is a technical, legal or regulatory reason for not doing so. The Client shall have regard to the Privacy Notice in respect of the potential processing of data out of the European Economic Area.
- 7.3. In relation to any Client, PES may make enquiries at any time with credit reference agencies, which will keep a record of such enquiry whether or not credit is granted.
- 7.4. Where credit is granted, PES may also disclose details about the Client's account with PES and the Client's conduct of the account to such agency or to other agencies or to debt collection agencies. This information may be searched by credit grantors and used and given out in assessing applications for future credit facilities and for debt collection, fraud prevention and other purposes.
- 7.5. In this clause, references to "Client" shall be deemed to include officers, employees, contractors and agents in relation to which PES receives personal data arising out of or in connection with PES's dealings with the Client and references to "PES" shall be deemed to include its Affiliates. The Client may request that PES provides a statement of how any personal data has been used within a reasonable time so that compliance may be audited.
- 7.6. PES shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss and destruction of, or damage to, personal data.
- 7.7. Where, independently of the processing of the Client's personal data by PES, any Service is used by a Client as a controller or processor of data acquired from or concerning any third party, the Client accepts full responsibility for compliance with all applicable legal, regulatory and contractual requirements. PES accepts no liability for any improper or unauthorised holding, storage and processing of such data by the Client. In the event that any such use gives rise to any third party claim against PES for loss, damage or expense, the Client agrees to indemnify PES in respect of all losses and expenses so-incurred. The Client shall assist PES in meeting its obligations under the Data Protection Requirements, in particular, obligations relating to security of processing, the notification of personal data breaches and data protection impact assessments.

- 7.8. The Client warrants that where it passes personal data to PES as a data controller or processor it shall have entered into agreements with its customers and suppliers which are compliant with its obligations pursuant to the Data Protection Requirements.

8. Limitation of Liability

- 8.1. The maximum liability of PES in respect of its potential liabilities for any individual claim shall not exceed the applicable Maximum Sum.
- 8.2. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 8.2.1. death or personal injury caused by negligence; and
 - 8.2.2. fraud or fraudulent misrepresentation.
- 8.3. Subject to clause 8.2, PES's total liability to the Client shall not exceed the Maximum Sum.
- 8.4. The following types of loss are wholly excluded:
- 8.4.1. loss of profits,
 - 8.4.2. loss of sales or business,
 - 8.4.3. loss of agreements or contracts,
 - 8.4.4. loss of anticipated savings,
 - 8.4.5. loss of use or corruption of software, data or information,
 - 8.4.6. loss of or damage to goodwill, and
 - 8.4.7. Indirect or consequential loss.
- 8.5. PES has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and 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.
- 8.6. If any circumstances arise which may lead to a potential claim against PES, the Client must notify PES:
- 8.6.1. as soon as practicable after becoming aware of any facts, circumstances, events or allegations which may lead to a potential claim, of those facts, circumstances, events or allegations; and
 - 8.6.2. within three months after the date on which the Client became aware (or ought reasonably to have become aware) of the potential claim, including reasonable details of the events, facts or circumstances giving rise to the claim, the grounds for the claim and (to the extent known) the amount of the claim, PES shall have no liability in respect of any claim unless it is notified in accordance with this clause 8.6.
- 8.7. This clause 8 shall survive termination of the Contract.
- 8.8. "liability" in this clause 8 shall mean every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence) or otherwise.
- 8.9. Subject to clause 8.2, all conditions, warranties, representations or other terms that might otherwise be implied into the Contract by statute, common law, course of dealing, trade usage or otherwise are excluded from the Contract.

9. Termination

- 9.1. Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party written notice of at least one Business Day.
- 9.2. Without affecting any other right or remedy available to it, PES may suspend the supply of Services under the Contract or any other contract between the Client and PES if the Client fails to pay any amount due under the Contract on the due date for payment and the provisions of clauses 5.4 and 5.5 shall apply.

10. Consequences of Termination

- 10.1. On termination of the Contract:
 - 10.1.1. the Client shall immediately pay to PES all of PES's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, PES shall submit an invoice, which shall be payable by the Client immediately on receipt;
 - 10.1.2. the Client shall return all PES Materials and any work delivered to the Client which have not been fully paid for. If the Client fails to do so, then PES may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.2. Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

11. Confidentiality

- 11.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.
- 11.2. Each party may disclose the other party's confidential information:
 - 11.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
 - 11.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12. General

12.1. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

12.2. Assignment and other dealings

12.2.1. PES may at any time assign, subcontract, delegate or deal in any other manner with any or all of its rights and obligations under the Contract.

12.2.2. The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of PES.

12.2.3. PES may accept or pay referral and/or arrangement fees from or to third parties in connection with the provision of the Services.

12.3. Entire agreement

12.3.1. The Contract constitutes 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.

12.3.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

12.4. Variation

Except as set out in these Terms, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.5. Waiver

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

12.6. Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.7. Third party rights

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

12.8. Notices

12.8.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case), or sent by email to such email address (and marked for the attention of such individual) as may be agreed in writing between PES and the Client in respect of communication under the Contract.

12.8.2. Any notice or communication shall be deemed to have been received:

12.8.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

12.8.2.2. 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 at the time recorded by the delivery service; and

12.8.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.8.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

12.8.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

12.9. Governing law and jurisdiction

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

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

13. Definitions and Interpretation

- 13.1. In these Terms, "PES" means any or all of the following companies by whom Services of the nature set out below are (or are proposed to be) provided to the Client:

COMPANY	DESCRIPTION OF SERVICE
ThePES Limited (registered number 08135573)	Energy and sustainability matters including building regulations and planning policy compliance.

- 13.2. The following definitions apply in these Terms.

Affiliate:	in relation to a party, means any entity that directly or indirectly controls, is controlled by, or is under common control with that party, for so long as that control exists.
AI Technology:	any machine learning, deep learning and other artificial intelligence technologies and other artificial intelligence tools or methodologies, all software implementations of any of the foregoing, and related hardware or equipment, whether proprietary, licensed or otherwise made available (including as a cloud-based or third-party service).
Business Day:	a day other than a Saturday, Sunday or public holiday in England.
Client:	any person or firm who purchases Services from PES.
Client Default:	has the meaning set out in clause 4.3.
Commencement Date:	has the meaning given in clause 2.1.
Contract:	the contract between PES and the Client for the supply of Services in accordance with (and incorporating) these Terms.
Data Protection Requirements:	all applicable laws and regulations relating to the protection of personal data and the privacy of individuals.
Fees:	any fees and/or other sums payable by the Client for the supply of the Services in accordance with clause 5 (Fees and Payment).
Intellectual Property Rights:	copyright and related rights, trade-marks and service marks, business names and domain names, patents, utility models, rights to inventions, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and

rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Maximum Sum:	means, in respect of ThePES Limited, the lower of (i) £2,000,000 and (ii) 100% of the Fees paid or payable to PES under the Contract.
Order:	the Client's purchase order, or the Client's written acceptance of PES's quotation or fee proposal, as the case may be.
PES Materials:	has the meaning set out in clause 4.2.5.
Privacy Notice:	the notice issued by PES to the Client concerning the processing of data or as shall be published by PES on its website from time to time.
Services:	the services supplied (or to be supplied) by PES to the Client as set out in the applicable fee proposal or quotation. The Services provided by each of the PES companies are listed in clause 13.1.
Scope of Works:	the description or specification of the Services, as provided in writing by PES to the Client.
Terms:	these terms and conditions as amended from time to time in accordance with clause 12.4.

13.3. The following rules of interpretation apply in these Terms.

- 13.3.1. A reference to a person includes any individual, company, partnership or other legal entity.
- 13.3.2. If the Client consists of more than one person or entity, the liability of those persons (and/or entities) under the Contract shall be joint and several.
- 13.3.3. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 13.3.4. Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 13.3.5. A reference to writing or written includes email.