

SPE ENERGY LIMITED STANDARD TERMS AND CONDITIONS FOR THE SUPPLY AND DELIVERY OF GOODS AND SERVICES

Purchaser's attention is particularly drawn to the provisions of Clause 28

1.0 DEFINITIONS

In these Conditions, the following general definitions shall apply:

"Completed" shall be the time when:

- (a) Goods are delivered pursuant to the Contract (where Works covers the supply of Goods only); or
- (b) Services are completed (where Works covers the supply of Services with or without g Goods).

Completion shall not be delayed on account of additions, minor omissions or defects which do not materially affect the use of the Works or Section thereof.

"**Conditions**" shall mean the terms and conditions as set out herein except as otherwise agreed in writing between the parties.

"Contract" shall mean the agreement made between SPE Energy Ltd and Purchaser for the execution of the Works in accordance with the Conditions together with all documents including, but not limited to, SPE Energy Ltd quotation for the Works and any amendment(s) thereto, the Order, the Specification and all necessary written information & drawings to be supplied by Purchaser, to which reference may properly be made in order to ascertain the rights and obligations of the parties and to enable SPE Energy Ltd to progress the Contract without delay.

"Contract Price" shall mean the sum stated in the Contract as being the Contract Price, as may be amended from time to time in accordance with the provisions of the Conditions plus, in the case of work being undertaken (either in part or in the whole) on a chargeable day rate basis, the sum total of all such chargeable work carried out by SPE Energy Ltd under the Contract.

"Defects Liability Period" shall be the period stated in Clause 26.4.

"**Delivery Point**" shall mean the place or places to which Goods and/or Services shall be delivered in accordance with the Contract.

"Dispute" shall have the meaning ascribed to it in clause 32.1

"Dispute Notice" shall have the meaning ascribed to it in Clause 21.1.

"Due Date" shall mean the date by when the execution or delivery (as the case may be) of the Works or Section thereof, shall be Completed pursuant to the Contract.

"Engineering Freeze Date" shall mean the date, pursuant to clause 8.1, by which Purchaser shall have provided SPE Energy Ltd with all necessary essential engineering information as SPE Energy Ltd shall reasonably require.

"Force Majeure" means war, hostilities, (whether war be declared or not), acts of terrorism, riots or civil disorder, industrial disputes, acts of God or any other circumstances beyond the reasonable control of either party.



"Goods" shall include but not be limited to machinery, apparatus, materials, articles, and all other things to be supplied by SPE Energy Ltd in accordance with the Contract but excluding Provisions and Services.

"SPE Energy Ltd" means SPE Energy Ltd (company registration number SCO79314) and the legal successors in title to SPE Energy Ltd.

"Intellectual Property Rights" shall mean all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Order" shall mean Purchaser's order for the Works which may be given to SPE Energy Ltd by representative(s) of the Purchaser verbally (for emergency or urgent call outs) and/or in writing.

"Plant" shall mean any piece or pieces of plant, owned by Purchaser or a third party as defined in the Contract, upon which Services are to be carried out.

"Provisions" shall mean any temporary stores, -tackle, test equipment and other things brought upon the Site from time to time by SPE Energy Ltd and required thereon for the purposes of carrying out the Services but not for incorporation therein. The term excludes Goods and Services.

"Purchaser" shall be the party named in the Contract as such and the legal successors in title to Purchaser but not (except with the consent of SPE Energy Ltd) any assignee of Purchaser.

"Section" shall mean the parts, if more than one, into which the Works shall be divided pursuant to the Contract.

"Serviced Plant" shall mean Plant upon which work has been carried out by the Site Staff, either at the Site or in the Workshop, pursuant to the Contract.

"Services" shall include but not be limited to Surveying, Training, installation, erection, testing, precommissioning, final commissioning, supervisory services, servicing, repair, modification, adjustment, reconfiguration, reconstruction, reinstatement, or testing etc of the Goods and/or Plant and which shall be undertaken by Site Staff at the Site or in the Workshop in the performance of the Contract. The term excludes Goods and Provisions.

"**Site**" shall mean the place or places, excluding the Workshop, at which Services are to be undertaken by SPE Energy Ltd together with so much of the area surrounding such place or places as SPE Energy Ltd shall with Purchaser's consent use in connection with the Services otherwise than merely for the purpose of access to such place or places.

"Site Staff" shall mean such personnel, including but not limited to SPE Energy Ltd own servants or agents or those of any subsidiary or associated company, as SPE Energy Ltd shall deem necessary to undertake the Services.

"**Specification**" shall mean any specification for the Works (including any related plans and drawings) that is supplied by Purchaser to SPE Energy Ltd or provided by SPE Energy Ltd and agreed in writing by Purchaser.



"Surveying" shall include, but not be limited to, activities such as the viewing, assessment, measuring of and reporting upon prevailing Site and Plant arrangements, facilities and features, site and substation access routes and potential restrictions, the nature, scope and general condition of the Plant, space, and mounting limitations etc. The term specifically excludes the supply of Goods and/or any servicing, repair, modification, adjustment, reconfiguration, reconstruction, reinstatement, or testing activities.

"**Training**" shall mean the training of Purchaser's employees or those of third parties on such products and to such extent and at such location(s) as shall be defined in the Contract.

"Works" shall mean such Goods and/or Services as are to be supplied, provided or undertaken by SPE Energy Ltd pursuant to the Contract.

"Workshop" shall mean such of SPE Energy Ltd premises as may be used from time to time by Site Staff pursuant to the Contract.

2.0 CONSTRUCTION

- 2.1 In these Conditions, the following rules apply:
 - (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); and
 - (b) A reference to a party includes its legal personal representatives, successors or permitted assigns; and
 - (c) A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or reenacted; and
 - (d) Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - (e) A reference to writing or written includes faxes and e-mails; and
 - (f) Words importing persons shall include firms and corporations; and
 - (g) Words importing the singular only shall also include the plural and vice versa.
 - (h) A reference to one gender includes the other.

3.0 BASIS OF CONTRACT

- 3.1 These Conditions apply to the Contract to the exclusion of any other terms that Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.2 Purchaser shall ensure that the terms of the Order and any relevant Specification are complete and accurate.
- 3.3 Any quotation for the Works or part thereof given by SPE Energy Ltd shall:
 - a) Not constitute an offer; and
 - b) Be valid for the period stated in the quotation.
- 3.4 The Order shall only be deemed to be accepted when SPE Energy Ltd issues a verbal (for emergency or urgent call outs) and/or written acceptance of the Order, at which point the Contract shall come into existence.
- 3.5 The Contract shall constitute the entire agreement between the parties in respect of its subject matter and shall supersede all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter (if any) made or given prior to the date of the



Contract. Purchaser acknowledges that he has not relied on any statement, promise or representation made or given by or on behalf of SPE Energy Ltd which is not set out in the Contract. Unless otherwise agreed, all advertising material (in any form), samples, descriptive and shipping specifications, drawings, and particulars of weights and dimensions submitted by SPE Energy Ltd prior to the Contract coming into effect are deemed to have been issued or published for the sole purpose of giving Purchaser an approximate idea of the Works. Such data shall not form part of the Contract or any other contract between SPE Energy Ltd and Purchaser.

3.6 All of these Conditions shall apply to the supply of Goods and Services forming the Works except where application to one or the other is specified.

4.0 SHIPPING TERMS

4.1 Unless otherwise expressly stated in the Contract, shipping terms stated in these Conditions shall Have the meanings assigned to them in Incoterms 2010.

5.0 HOURS OF WORK AT SITE

- 5.1 Subject to the over-riding provisions of the Working Time Regulations (1998) as may be amended from time to time, work carried out by Site Staff shall be undertaken between the hours of 8.00am and 6.00pm, Monday to Friday inclusive of reasonable rest breaks. Any additional daily working hours that may be required, up to a maximum of 3 hours per day, shall require SPE Energy Ltd prior written agreement and will be subject to an extra charge. Unless otherwise agreed, night work, weekend work, public/bank holiday working and/or working in abnormal conditions/environments is specifically excluded. Should such extended working arrangements be required then additional costs would be chargeable to Purchaser's account.
- 5.2 Where work at the Site is to be carried out on a chargeable day rate basis then:
 - (a) The daily rate will apply from the time that Site Staff depart from their normal base of operations to the time of return thereto.
 - (b) Days worked in part (less than 10 hours) will be charged as full days.
 - (c) SPE Energy Ltd will produce timesheets for Purchaser's verification and agreement of time expended.
- 5.3 Time waiting or lost through circumstances outside SPE Energy Ltd control, including but not limited to Purchaser's instructions or lack of instructions, site induction courses, access restrictions, switching delays, unforeseeable Plant and Site conditions and stand-downs shall be chargeable to Purchaser's account based upon SPE Energy Ltd standard rates.

6.0 SITE FACILITIES & CONDITIONS

- 6.1 Unless otherwise agreed, the following conditions shall apply to Services:
 - (a) Purchaser shall provide suitable access to and possession of the Site in reasonable time.
 - (b) Purchaser shall ensure that all equipment and facilities to be provided by him, including but not limited to lifting cranes and the like, consumable stores, water and power, scaffolding, lighting, heating and support labour, as are specified in the Contract, are freely available on the Site in readiness for the Services to commence. Any extra cost incurred by SPE Energy Ltd resulting from the non-availability of such Purchaser's equipment and facilities shall be added to the Contract Price and paid for
 - (c) The work shall not be carried out in unhealthy or unsafe conditions. Purchaser shall provide SPE Energy Ltd with full details of the Site's health and safety regulations

accordingly.



prior to the commencement of the Services. SPE Energy Ltd shall have the right, without it incurring any liability whatsoever and howsoever arising, to postpone or suspend the Services at any time if, when acting reasonably, it shall deem that the Site conditions are unhealthy or unsafe (for whatever reason including but not limited to the presence at Site of asbestos or asbestos-based materials) or do not meet, as a minimum, SPE Energy Ltd own health and safety standards. Purchaser shall remedy any such adverse Site condition(s) prior to SPE Energy Ltd commencing or re-commencing the Services. SPE Energy Ltd shall be entitled to an equitable adjustment to the Contract Price and/or the Due Date arising because of any such postponement or suspension of work.

- (d) Purchaser shall provide, free of charge to SPE Energy Ltd, such closed or guarded premises on or near the Site as are necessary to protect Goods and Provisions against theft and deterioration.
- (e) When undertaking Services at UK Sites, SPE Energy Ltd shall take all reasonable precautions to ensure that each member of Site Staff is medically fit prior to mobilisation. Subsequently, if any member of Site Staff suffers temporary sickness, injury, or incapacity whilst on Site, he shall be afforded free of charge access to such of the Site's welfare and medical facilities as are readily available. In the case of extended sickness, injury or incapacity resulting in the necessity of repatriation of any member of Site Staff, the sole liability of SPE Energy Ltd shall be limited to the costs of repatriation and the supply of appropriate replacement personnel.
- (f) When undertaking Services at non-UK Sites:
 - (i) SPE Energy Ltd shall take all reasonable precautions to ensure that each member of Site Staff is medically fit prior to mobilisation, Subsequently, if any member of Site Staff suffers temporary sickness, injury or incapacity whilst overseas, Purchaser shall provide free welfare, medical and/or dental attention and if applicable full hospital facilities. In the case of extended sickness, injury or incapacity resulting in the necessity of repatriation of any member of Site Staff, the sole liability of SPE Energy Ltd shall be limited to the costs of repatriation and the supply of appropriate replacement personnel.
 - (ii) Purchaser shall provide local hotel accommodation for Site Staff free of charge. The local hotel shall be a minimum 4-star rating. Rooms shall be single occupancy and air conditioned with en-suite facilities.
 - (iii) The responsibility for arranging and paying for Site Staff's UK domestic travel arrangements and international return air fares shall be as stated in the Contract. Purchaser shall be responsible for providing and paying for all local travel arrangements including but not limited to return travel between the port of arrival and the hotel and return travel between the Site and the hotel. Such local travel shall be by means of a first-class taxi service or equivalent and not by public transport.
 - (iv) Unless otherwise expressly stated in the Contract, Purchaser shall be responsible for the provision of certified test equipment in accordance with the minimum specification requirements that SPE Energy Ltd shall define to Purchaser in advance of Site Staff attending the Site and such test equipment shall be made available free of charge for use by the Site Staff whilst carrying out the Works. Risk in all such provided test equipment shall always remain with Purchaser.
 - (v) Any local income tax or other impost payable by Site Staff shall be immediately reimbursed by Purchaser to the Site Staff and shall be deemed an expense payable by Purchaser.
 - (vi) All communications between Purchaser and Site Staff shall be conducted in the English language only. If language translator(s) are necessary then Purchaser shall be liable for the provision of such, at no cost to SPE Energy Ltd.



- (g) Following commencement of the Services, any materials or labour requirements in addition to those included in the Works and where the need for such could not normally have been foreseen by a conscientious organisation prior to the commencement of the Services shall incur additional costs and shall constitute a variation to the Contract.
- (h) Purchaser shall allow Site Staff free and reasonable use of the Site canteen and toilet facilities.

7.0 VARIATIONS & SUSPENSION

- 7.1 Should SPE incur extra cost owing to variation or suspension of the Contract, in part or in whole, due to Purchaser's instructions or lack of instructions or to interruptions, delays, overtime, unusual hours, mistakes or work for which SPE is not responsible, or to any specified Site facilities and working conditions not being maintained by Purchaser, the Contract Price will be adjusted by such amounts as may be reasonable in all the circumstances.
- 7.2 Save where suspension is necessary by reason of default on SPE part or the proper execution or the safety of work required under or in connection with the Contract, other than where such necessity results from any act or default of Purchaser or the occurrence of any of Purchaser's risks, then SPE shall be entitled to payment for any Goods, work on which or the delivery of which at the normal delivery date has been suspended due to Purchaser's instructions or lack of instructions for more than 14 days.

8.0 SUPPLY OF INFORMATION TO SPE

- 8.1 Purchaser shall provide SPE Energy Ltd with all necessary information that SPE Energy Ltd may reasonably require from time to time to permit SPE Energy Ltd to proceed uninterruptedly with the Contract.
- 8.2 If deemed necessary by SPE Energy Ltd, the Contract provisions shall include an Engineering Freeze Date.
- 8.3 The period during which Purchaser shall approve and/or comment upon drawings and documents submitted by SPE Energy Ltd for Purchaser's approval shall be 7 calendar days unless otherwise expressly stated in the Contract.
- In the event that the Contract is delayed, in part or in the whole, by reason of delay in the provision by Purchaser of the necessary information or to changes in such information, or the extent of the Contract is increased thereby, SPE Energy Ltd shall be entitled to amend the Contract Price to compensate it for any additional costs that it may have reasonably or properly incurred and to extend the Due Date by such period as may be reasonable in all the circumstances.

9.0 WORKS INSPECTION AND FACTORY ACCEPTANCE TESTING OF GOODS

9.1 SPE Energy Ltd shall, where the Works include the supply of Goods, provide such works inspection and Factory Acceptance Testing facilities for the Goods as are agreed in the Contract.

10.0 STORAGE OF GOODS

10.1 If through Purchaser's instructions or lack of instructions, SPE Energy Ltd is unable to despatch completed Goods at the time when it is reasonable for them to be despatched having regard to the Due Date or agreed extension thereto then SPE Energy Ltd will arrange storage, at a storage facility of its own choice, of such Goods on Purchaser's behalf for a period not exceeding 6 months.



- 10.2 For the purposes of clause 12 (Terms of Payment) and clause 25 (Liability for Delay), Goods stored in accordance with this clause 10 shall be deemed to have been delivered pursuant to the Contract at the time upon which storage commences and shall thereupon be invoiced in accordance with the provisions of Clause 12.
- 10.3 The first 14 calendar days of such storage shall be free of charge to Purchaser however, thereafter, Purchaser shall immediately become liable for SPE Energy Ltd storage charges including but not limited to costs associated with double handling and insurance of the Goods. Such storage charges shall be invoiced to Purchaser monthly in arrears.
- 10.4 Upon SPE Energy Ltd receipt of Purchaser's final despatch instructions the Goods shall be removed from storage and despatched according to such instructions. Immediately thereafter the periods of time stated in the Defects Liability provisions under clause 26 and the Latent Defects Liability provisions under clause 27 shall commence.
- 10.5 SPE Energy Ltd undertakes to make good, free of charge, any defect or deterioration that may have developed or any loss that may have occurred during the period that it is responsible for storing the Goods on Purchaser's behalf.
- 10.6 Any requirements for an extended storage period viz. more than 6 months shall be the subject of separate negotiation and agreement in advance.

11.0 PACKAGING & DELIVERY

- 11.1 Hardware packaging methods & materials, mode(s) of transport and Delivery Point shall be as stated in the Contract.
- 11.2 Engineering documentation and drawings provided by SPE Energy Ltd shall be delivered to Purchaser by either electronic means or conventional mail or personal delivery or courier service in accordance with the Contract or as otherwise agreed from time to time. In the case of delivery by courier then delivery shall be deemed to have been affected when the deliverable form of such documentation and drawings has been placed into the jurisdiction of the courier.
- 11.3 In respect to the exporting of Goods with delivery terms FCA (named place) or FOB (UK Port) then:
 - (a) SPE Energy Ltd shall not be required to give Purchaser the notice relating to insurance mentioned in Section 32(3) of the Sale of Goods Act 1979.
 - (b) If the Contract provides for delivery FCA then SPE Energy Ltd shall deliver the Goods to the named place.
 - (c) If the Contract provides for delivery FOB UK Port, then SPE Energy Ltd shall deliver the Goods on board a vessel named by Purchaser or on Purchaser's behalf at the port stated in the Contract.
- 11.4 In respect to the exporting of Goods with delivery terms CFR, CIF, CIP, CPT, DDU and DDP then:
 - (a) If the Contract provides for delivery CIF, CFR, CPT, or CIP (as the case may be) then SPE Energy Ltd shall not be liable for lighterage, landing charges, dock fees, wharf fees or customs dues.
 - (b) If the Contract provides for delivery CFR, CPT or DDU, marine insurance having been omitted, SPE Energy Ltd shall, if so, requested in good time by Purchaser, give such reasonable notice as will enable Purchaser to insure the Goods during transit. In the absence of such request SPE Energy Ltd shall not be liable for failure to give Purchaser such notice under Section 32(3) of the Sale of Goods Act 1979.



- (c) If the Contract provides for delivery CIF or DDP then, at SPE Energy Ltd option, a document certifying in proper form that insurance has been implemented (and whether other goods are included in or covered by such insurance) and endorsed by SPE Energy Ltd may be tendered by SPE Energy Ltd instead of a policy of insurance in respect of Goods shipped. Purchaser shall accept such documents in lieu of any policy together with invoice or invoices and bill or bills of lading and/or airway bill as applicable, as complete tender of shipping documents by SPE Energy Ltd.
- (d) Should freight and/or insurance rates have increased or decreased from any cause between the date of the Contract and the date on which the Goods are shipped then, unless otherwise agreed in the Contract, the Contract Price shall be increased or decreased by the net amount of the increase or decrease due to the variation of such rates.

12.0 TERMS OF PAYMENT AND CURRENCY FLUCTUATIONS

- 12.1 The currency of the Contract, terms of payment and settlement period shall be as stated in the Contract.
- 12.2 SPE Energy Ltd shall be entitled to invoice Goods as though delivered, upon the issue of notification to Purchaser that the Goods are complete and are being held in storage on Purchaser's behalf in accordance with the provisions of Clause 10.
- 12.3 If, through no fault of SPE Energy Ltd, the payment of any sum payable under this clause shall be delayed by Purchaser for more than fourteen days then, unless otherwise expressly stated in the Contract, Purchaser shall be liable under the Contract for the payment to SPE Energy Ltd of:
 - (a) Interest on the amount of the delayed payment for the period of delay calculated at the rate established under the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 as may be amended from time to time; plus
 - (b) Compensation in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 as may be amended from time to time.
- 12.4 If Purchaser shall fail to make any payment as provided in this clause, SPE Energy Ltd shall be at liberty, without prejudice to any other remedy, after giving to Purchaser fourteen days' notice in writing of its intention so to do, to suspend the Contract or any Section thereof until the said payment be made. Any expenses incurred by SPE Energy Ltd arising by virtue of the suspension and the subsequent resumption of work shall be added to the Contract Price.
- 12.5 If the currency of the Contract is not GBP£ then, unless otherwise expressly stated in the Contract, SPE Energy Ltd shall have the right to vary the Contract Price to compensate for any fluctuation in the currency exchange rate between the date that the Contract comes into effect and the date(s) of invoicing for the Works or Section thereof as the case may be.

13.0 SET-OFF

13.1 Purchaser shall have no right to set-off any sums owed by SPE Energy Ltd under this or any other contract against any sums owed to SPE Energy Ltd by Purchaser under this Contract.

14.0 FORCE MAJEURE

14.1 If either party is prevented or delayed in performing his contractual obligations by any Force Majeure event, he shall be excused the non-performance of such obligation provided that the Force Majeure event has been notified to the other party as soon as practicable after it's occurrence.



14.2 If performance is delayed or prevented for a continuous period of 120 days, then either party may by written notice to the other cancel the Contract. In the event of such cancellation SPE Energy Ltd shall be reimbursed by Purchaser for all reasonable costs incurred by SPE Energy Ltd in the execution of the Contract up to the date of such cancellation. Such cancellation shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such cancellation.

15.0 RIGHTS OF THIRD PARTIES

15.1 Nothing in the Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999, or any subsequent appropriate legislation.

16.0 ASSIGNMENT AND NOVATION

16.1 Purchaser shall not assign or novate the Contract nor any part thereof nor any of its rights and obligations there-under without the prior written consent of SPE Energy Ltd which consent shall not be unreasonably withheld or delayed.

17.0 PASSING OF TITLE AND RISK

- 17,1 Unless otherwise expressly stated in the Contract:
 - (a) Risk in Goods shall pass to Purchaser upon delivery to the delivery point.
 - (b) Risk in Plant and/or Serviced Plant shall remain with Purchaser at all times save where such is in the Workshop in which case risk in such Plant and/or Serviced Plant shall be with SPE Energy Ltd and remain so until such time as it is subsequently returned to Site whereupon risk shall re-vest in Purchaser.
- 17.2 Unless otherwise expressly stated in the Contract, title to the Goods shall not pass to Purchaser until SPE Energy Ltd has received payment in full (in cash or cleared funds) for the Goods.
- 17.3 Until title to the Goods has passed to Purchaser, Purchaser shall:
 - (a) Hold the Goods on a fiduciary basis as SPE Energy Ltd bailee; and
 - (b) Not remove, deface or obscure any SPE Energy Ltd applied identifying mark(s) on the Goods, such marks including but not being limited to model and/or serial numbers; and
 - (c) Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
 - (d) Notify SPE Energy Ltd immediately if he becomes subject to any of the events listed in clause 23.2; and
 - (e) Give SPE Energy Ltd such information relating to the Goods as SPE Energy Ltd may reasonably require from time to time, but Purchaser may resell or use the Goods in the ordinary course of its business.
- 17.4 If, before title to the Goods passes to Purchaser, Purchaser becomes subject to any of the events listed in clause 23.2 or SPE Energy Ltd reasonably believes that any such event is about to happen and notifies Purchaser accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy SPE Energy Ltd may have, SPE Energy Ltd may at any time require Purchaser to deliver up the Goods and, if Purchaser fails to do so promptly, enter any premises of Purchaser or of any third party where the Goods are stored in order to recover them.



18.0 PATENTS

- 18.1 SPE Energy Ltd will indemnify Purchaser against any claim of infringement of Letters, Patent, Registered Design, Trademark, or Copyright (published at the date of the Contract) by the use or sale of any article or material supplied by SPE Energy Ltd to Purchaser and against all costs and damages which Purchaser may incur in any action for such infringement or for which Purchaser may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to SPE Energy Ltd having followed a design or instruction furnished or given by Purchaser or to the use of such article or material in a manner or for a purpose or in a foreign country not specified or disclosed to SPE Energy Ltd, or to any infringement which is due to the use of such article or material not supplied by SPE Energy Ltd.
- 18.2 This indemnity is conditional on Purchaser giving to SPE Energy Ltd the earliest possible notice in writing of any claim being made or action threatened or brought against him and on him permitting SPE Energy Ltd at SPE Energy Ltd expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.
- 18.3 Purchaser on his part warrants that any design or instruction furnished or given by him shall not be such as will cause SPE Energy Ltd to infringe any letters patent, registered design, trademark, or copyright in the execution of the Contract.

19.0 PROPERTY RIGHTS & OWNERSHIP

19.1 SPE Energy Ltd retains all Intellectual Property Rights in the Works or any other work to be supplied under the Contract and whether pre-existing or developed specifically for the purposes of the Contract. Purchaser shall be granted a royalty free, non-assignable, non-transferable license to use SPE Energy Ltd patents, registered designs or other like rights of all kinds relevant to the Contract, only for the purposes of the installation, operation and maintenance of the Works.

20.0 STATUTORY AND OTHER REGULATIONS

20.1 If after the date that the Contract comes into effect, there shall be enacted or brought into force any legislation which could not have been reasonably foreseen by an experienced supplier engaged in the same or a similar business to that of SPE Energy Ltd and which causes an increase in the cost to SPE Energy Ltd of carrying out any part of the Contract, the amount of such increase shall be added to the Contract Price. Further, if such legislation increases the time that SPE Energy Ltd requires to complete the Contract then the Due Date shall also be subject to such extension as is reasonable in the circumstances.

21.0 ALTERNATIVE DISPUTE RESOLUTION

- 21.1 In the event that SPE Energy Ltd (in accordance with clause 32.1) determines to utilise alternative dispute resolution prior to court action, it shall give written notice of the dispute to the Purchaser, setting out the nature of the Dispute and full particulars ("Dispute Notice") together with supporting documentation. Within 7 days of service of the Dispute Notice, management representatives of both parties, in each case being of appropriate seniority and experience and with appropriate decision-making authority shall attempt in good faith to resolve the Dispute.
 - 21.2 If the aforesaid management representatives are for any reason unable to resolve the Dispute within 14 days of the service of the Dispute Notice, the Dispute shall be referred to the managing directors or chief executives of the parties (or the appointees of such executives) ("MDs") who shall attempt in good faith to resolve it.



- 21.3 If the aforesaid MDs are for any reason unable to resolve the dispute within 14 days of it being referred to them, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing ("ADR notice") to the other party requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.
- 21.4 No party may commence court proceedings in relation to any Dispute where a mediator has been appointed in accordance with this clause 21 until 30 days after the appointment of the mediator, provided that the right to issue proceedings is not prejudiced by any delay. Failure by the parties to appoint a mediator within 14 days of service of an ADR notice shall entitle either party to revert to settlement by immediate court action.

22.0 TERMINATION FOR CONVENIENCE

22.1 In the event Purchaser seeks to cancel the Contract (other than in circumstances where the cancellation has arisen from SPE Energy Ltd material failure to comply with its obligations sufficient in law to justify Purchaser cancelling) SPE Energy Ltd shall not unreasonably withhold its agreement to the same provided Purchaser accepts full responsibility for and pays to SPE Energy Ltd all costs and losses incurred by SPE Energy Ltd up to the time of such cancellation including costs and losses associated with administration and engineering and the consequential cancellation of any sub-contracts or sub-orders. In addition, Purchaser shall compensate SPE Energy Ltd in full for SPE Energy Ltd loss of profits and/or overhead recovery opportunities. In this respect, SPE Energy Ltd acknowledges that any such claims for costs and losses shall be for those reasonably incurred and/or sustained.

23.0 PURCHASER'S INSOLVENCY OR INCAPACITY

- 23.1 If Purchaser becomes subject to any of the events listed in clause 23.2 or SPE Energy Ltd reasonably believes that Purchaser is about to become subject to any of them and notifies Purchaser accordingly, then, without limiting any other right or remedy available to SPE Energy Ltd, SPE Energy Ltd may cancel or suspend all further deliveries under the Contract or under any other contract between Purchaser and SPE Energy Ltd without incurring any liability to Purchaser, and all outstanding sums in respect of Goods delivered to Purchaser shall become immediately due.
- 23.2 For the purposes of clause 23.1, the relevant events are:
 - (a) Purchaser suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
 - (b) Purchaser commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where Purchaser is a company) these events take place for the sale purpose of a scheme for a solvent amalgamation of Purchaser with one or more other companies or the solvent reconstruction of Purchaser; or
 - (c) (being an individual) Purchaser is the subject of a bankruptcy petition or order; or
 - (d) a creditor or encumbrancer of Purchaser attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or



- sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days: or
- (e) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an Administrator is given or if an administrator is appointed over Purchaser; or
- (f) (being a company) a floating charge holder over the assets of Purchaser has become entitled to appoint or has appointed an administrative receiver; or
- (g) a person becomes entitled to appoint a receiver over the assets of Purchaser or a receiver is appointed over the assets of Purchaser; or
- (h) any event occurs, or proceeding is taken, with respect to Purchaser in any jurisdiction to which it is subject that has an effect equivalent or like any of the events mentioned in clause 23.2(a)to clause 23.2(g) (inclusive); or
- (i) Purchaser suspends, threatens to suspend, ceases, or threatens to cease to carry on all or substantially the whole of its business; or
- (j) the financial position of Purchaser deteriorates to such an extent that in the opinion of SPE Energy Ltd the capability of Purchaser to adequately to fulfil his obligations under the Contract has been placed in jeopardy.
- (k) (being an individual) Purchaser dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

24.0 CONFIDENTIALITY

- A party (Receiving Party) shall keep in strict confidence all technical or commercial knowhow, specifications, inventions, processes, or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents, or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. The provisions of this clause shall not apply to:
 - (a) Information which is in the public domain otherwise than through a breach of this Condition; or
 - (b) Information already known to a party and not the subject of any obligation of confidentiality; or
 - (c) Information obtained from a third party who is free to disclose the same. This clause 24 shall survive termination of the Contract.

25.0 LIABILITY FOR DELAY

- 25.1 Any times quoted for the Works to be Completed by the Due Date are save as expressly stated in writing approximate only and time shall not be deemed to be of the essence of the Contract.
- 25.2 If work pursuant to the Contract is not Completed by the Due Date or any extension thereto due to SPE Energy Ltd own fault then where the Due Date is stated in the Contract to be fixed, SPE Energy Ltd undertakes to pay, in full satisfaction of its liability for the delay, for each week or part of a week of delay liquidated and ascertained damages at the rate of 0.5 per cent of the value of such parts of the Works as are delayed up to a maximum of 5.0 per cent of the value of such parts of the Works as are delayed. Purchaser shall not be entitled to terminate the Contract on the grounds of delay until such time as SPE Energy Ltd liability for the payment of liquidated and ascertained damages arising from the delay has been extinguished by the length of the delay.



- 25.3 In all other cases where the Due Date is deemed to be approximate pursuant to clause 25.1 or is otherwise expressly stated in the Contract as being an estimate and if SPE Energy Ltd shall fail to have Completed the Works by the Due Date then, if subsequent to and as a consequence of delay, Purchaser is able to reasonably demonstrate to SPE Energy Ltd that in all circumstances he must seek replacement Goods and/or Services from a third party in lieu of SPE Energy Ltd, the sole liability of SPE Energy Ltd to Purchaser in such circumstances shall be limited to Purchaser's direct, reasonable and justifiable costs incurred in obtaining such replacements, being of similar description and quality in the cheapest market available, less the price of such part or parts of the Goods or Services as the case may be that Purchaser no longer requires from SPE Energy Ltd. Otherwise, SPE Energy Ltd shall have no liability for any delay to the Due Date.
- 25.4 In any event, SPE Energy Ltd shall not be liable for:
 - (a) Any failure to meet the Due Date that is caused by a Force Majeure event; or
 - (b) Delays incurred by reason of Purchaser's instructions or lack of instructions.

26.0 DEFECTS LIABILITY

- SPE Energy Ltd shall have no liability under this clause 26 for activities undertaken during Surveying and/or Training.
- 26.2 SPE Energy Ltd warrants that:
 - (a) The Works will be carried out with the reasonable professional skill and care to be expected of a properly qualified and competent member of its profession experienced in carrying out work of a similar size, scope, complexity, and purpose to that required by the Contract; and
 - (b) The Works shall be. fit for the purpose(s) stated in the Contract and/or any applicable Specification.
- 26.3 Except as set out in these Conditions, SPE Energy Ltd liability under this clause shall, in all circumstances, be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the Works.
- 26.4 Save as provided under clauses 26.1, 26.2 and 26.3 and subject to the provisions of Clause 10: Storage, SPE Energy Ltd sole liability to Purchaser under this Clause 26 shall be to make good by re-performance, repair, or replacement as SPE Energy Ltd may reasonably determine and, save as herein after stated, at its own expense, any defect in any part of the Works which may appear or occur during the Defects Liability Period being:
 - (a) Where the scope of the Works is limited to the supply of engineering documentation and drawings only, 30 days from the date that such are delivered pursuant to the Contract: or
 - (b) Where the scope of the Works is for the supply of Goods without Services, 12 months from the date that the Goods are delivered or are deemed to have been delivered pursuant to the Contract; or
 - (c) Where the scope of the Works is for the supply of both Goods and Services (where the purpose of the Services is to install the Goods), 12 months from when the Works or Section are Completed or, if earlier, 18 months, from the date that the Goods are delivered or are deemed to have been delivered pursuant to the Contract; or
 - (d) Where the scope of the Works is limited to the supply of Services only, 12 months from the date when the Works or Section thereof are completed; and arise either from any defective materials, workmanship, or design, or from any act or omission of SPE Energy Ltd done or omitted during the Defects Liability Period.



- 26.5 SPE Energy Ltd shall not be liable for any defects in or damage to any part of the Works arising from circumstances which are, or are deemed to be, beyond its reasonable control including but not limited to:
 - (a) Failure of Purchaser or any third party to follow SPE Energy Ltd oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Works or (if there are none) good trade practice; or
 - (b) SPE Energy Ltd following any drawing, design or specification supplied by Purchaser; or
 - (c) Mishandling of the Works by Purchaser or any third party or
 - (d) Impact with other objects, dropping or falls; or
 - (e) Alterations or repairs to the Works not carried out or authorised by SPE Energy Ltd; or
 - (f) Accident, abuse, fair wear and tear, misuse, or neglect; or
 - (g) Natural disasters such as fires, floods, or lightning; or
 - (h) The use of parts, components, services, or software not supplied or authorised by SPE Energy Ltd.
- 26.6 Consumable items including, but not limited to, indicating lamp bulbs and fuse cartridges/links are excluded from this Defects Liability obligation.
- 26.7 Purchaser shall, in the first instance, report any defect arising under this clause 26 to SPE Energy Ltd Customer Support Department.
- 26.8 In the event that the defect is not due to SPE Energy Ltd default then Purchaser shall be liable for the full costs of any inspections and/or surveys undertaken by SPE Energy Ltd, whether at Purchaser's premises or elsewhere, plus the full costs of all necessary remedial work and associated costs, including but not limited to, delivery or re-delivery of repaired or replacement items.
- 26.9 The provisions of this clause 26 shall apply in the same measure to any repairs and/or replacement items supplied by SPE Energy Ltd but not so as to extend the Defects Liability Period by more than 12 months.

27.0 LATENT DEFECTS LIABILITY

- 27.1 In addition to its obligations under clause 26, SPE Energy Ltd shall also be responsible for making good with all possible speed any defect to which this clause applies which may develop in any Goods supplied pursuant to the Contract during the period of three years ("Latent Defects Period") immediately following delivery of such Goods. Provided always that such defect:
 - (a) Would not have been disclosed by a reasonable visual examination prior to the expiry of the Defects Liability Period; and
 - (b) Had a material adverse effect on the performance of the Goods; and
 - (c) Was not caused by_ the failure of Purchaser to operate and maintain the Goods in accordance with SPE Energy Ltd operation and maintenance manuals; and
 - (d) Was caused by SPE Energy Ltd "gross misconduct" as defined hereunder.
- 27.2 For the purposes of this clause the expression "gross misconduct" does not comprise any and every lack of proper care or skill but means any act or omission on the part of SPE Energy Ltd implying either a failure to pay due regard to serious consequences which a conscientious organisation would normally foresee as likely to ensue or a deliberate disregard of any consequences of such act or omission.



28.0 LIMITATION OF LIABILITY

In accepting these conditions, Customer acknowledges that they are aware of and agrees that the exclusions and limitations on liability provided by this Clause 28 are reasonable in the circumstances.

- 28.1 Nothing in these Conditions shall exclude or limit the liability of SPE Energy Ltd for:
 - (a) Death or personal injury caused by SPE Energy Ltd negligence; or
 - (b) Any matter for which it would be illegal for SPE Energy Ltd to exclude or attempt to exclude its liability for; or
 - (c) Fraud or fraudulent misrepresentation; or
 - (d) The indemnity contained in clause 18; or
 - (e) Breach of the terms implied by Section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (f) Breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 28.2 Save as otherwise provided under clause 28.1 (e) and 28.1 (f), all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 28.3 Without prejudice to the provisions of clause 28.1, SPE Energy Ltd shall not be liable to Purchaser and whether because of breach of contract, warranty, guarantee, indemnity, strict liability, tort (including negligence) or restitution, breach of statutory duty or misrepresentation or otherwise, for any of the following damages or losses, in each case whether direct or indirect, such as, but not limited to:
 - (i) Any special indirect or consequential damages or loss; or
 - (ii) Loss of profits; or
 - (iii) Loss of savings; or
 - (iv) Loss of contract such as but not limited to loss of revenue; or
 - (v) Loss of use; or
 - (vi) Loss of power supplies; or
 - (vii) Costs of capital; or
 - (viii) Loss of business opportunity; or
 - (ix) Any like loss howsoever incurred and/or suffered by Purchaser arising under or in connection with the Contract even if SPE Energy Ltd was advised of the possibility of such loss or losses in advance.
- 28.4 Save as set out in clause 25 for the deduction of liquidated damages for delay, the total aggregate liability of SPE Energy Ltd to Purchaser in respect of all other losses arising under or in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed the Contract Price except (a) in the case of personal injury or death caused by SPE Energy Ltd negligence where the liability is unlimited and (b) in the event of damage to property for which SPE Energy Ltd is legally liable where SPE Energy Ltd liability shall not exceed £5,000,000 (Five Million Pounds) for anyone event and in the annual aggregate in anyone period of insurance.

29.0 WAIVER

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



exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

30.0 SEVERANCE

- 30.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 30.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

31.0 UN CONVENTION

31.1 In respect to the exporting of Goods, the provisions of the United Nations Convention on Contracts for the International Sale of Goods ("The Vienna Convention") are hereby excluded from the Contract.

32.0 LAW & JURISDICTION

32.1 The Contract shall be governed by the laws of England and Wales and any disputes arising out of or in connection with the Contract or the performance, validity, or enforceability of it ("Dispute") shall be heard and determined by an English or Welsh Court of competent jurisdiction or, at the sole option of SPE Energy Ltd, shall be submitted to the alternative dispute resolution procedure set out in clause 21.