

TERMS AND CONDITIONS

1. BASIS OF CONTRACT

- 1.1. These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.2. The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Order shall be deemed to be accepted on the earlier of:
 - 1.2.1. the Supplier issuing a written acceptance of the Order; or
 - 1.2.2. 7 days of the Supplier's receipt of the Order, if the Supplier has not previously notified the Customer in writing that it rejects the Order, at which point the Contract shall come into existence.

2. THE GOODS

- 2.1. The Supplier shall ensure that the Goods shall:
 - 2.1.1. correspond with their description and any applicable Specification and any sample approved by the Customer;
 - 2.1.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
 - 2.1.3. where applicable, be free from defects in design, material and workmanship and remain so for 12 months after Delivery; and
 - 2.1.4. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 2.2. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 2.3. The Customer shall have the right to inspect and test the Goods at any time before delivery.
- 2.4. If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 2.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 2.5. At any time before delivery the Customer may request changes to the Order. The Supplier shall use best endeavours to comply with the Customer's request for any changes under this clause and neither the Supplier's charges nor any terms of the Contract shall vary as a result of the change.

- 2.6. For those Goods manufactured by the Supplier, the Supplier undertakes to make spare parts available to the Customer at the Supplier's standard list price for at least 2 years from the date of delivery of the Goods. For those items of Goods manufactured by third parties, the Supplier shall use best endeavours to get a similar undertaking from such third party manufacturers and will, in any event, provide the Customer with contact details for those entities known to the Supplier which provide spare parts for the items manufactured by such third parties.

3. DELIVERY OF GOODS

- 3.1. The Supplier shall ensure that:
 - 3.1.1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in a condition fit for full price commercial sale by the Customer; and
 - 3.1.2. each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the purchase order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 3.2. The Supplier shall deliver the Goods:
 - 3.2.1. on the date specified in the Order or as instructed by the Customer, time being of the essence in each case;
 - 3.2.2. to the Customer's premises or such other location as is set out in the Order, or as instructed by the Customer prior to delivery ("**Delivery Location**"); and
 - 3.2.3. during the Customer's normal business hours, or as instructed by the Customer.
- 3.3. Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location and confirmation of delivery by the Customer by signature of the relevant delivery note containing the Customer's pre-agreed content which shall include a purchase order number and the appropriate commodity codes.
- 3.4. The Supplier's delivery shall be in strict accordance with the quantity of Goods set out in the Order failing which the Customer shall have the rights set out in clause 5 below.
- 3.5. The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where such consent is given the Goods may be invoiced and paid for separately always subject to the provisions of this clause 3.
- 3.6. The Supplier must not at any time exercise or seek to enforce any lien over any Goods.
- 3.7. Any delivery note accompanying a delivery of Goods which is signed or stamped by or on behalf of the Customer is an acknowledgment of delivery and will not constitute an acceptance by the Customer that the Goods comply with the Contract. The Customer will not be considered to have accepted any Goods until after it has had a reasonable time to inspect the Goods or, if later, following a reasonable time after any latent defect in the Goods has become apparent.

4. SUPPLY OF SERVICES

- 4.1. The Supplier shall from the date set out in the Order and for the duration of the Contract provide the Services to the Customer in accordance with the terms of the Contract.

- 4.2. The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer, time for performance being of the essence.

- 4.3. In providing the Services, the Supplier shall:

- 4.3.1. co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- 4.3.2. perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 4.3.3. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- 4.3.4. ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- 4.3.5. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 4.3.6. use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- 4.3.7. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 4.3.8. observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- 4.3.9. hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- 4.3.10. not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.

5. REMEDIES

- 5.1. If the Goods are not delivered on the date they are due as referred to in clause 3.2.1, or in the strict quantities ordered referred to in clause 3.4, or do not comply with the undertakings set out in clause 3, or the Services are not performed by the applicable date or in accordance with the Contract then, without limiting any of its other rights or remedies, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:
 - 5.1.1. to terminate the Contract immediately by giving written notice to the Supplier;
 - 5.1.2. in the case of Goods, to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 5.1.3. to require the Supplier to repair or replace the rejected Goods and/or to re-perform the Services, or to provide a full refund of the price of the rejected Goods and/or Services (if paid);
 - 5.1.4. to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make.
- 5.2. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.3. This clause 5 shall survive termination of the Contract.
- 5.4. The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

6. TITLE AND RISK

- Title and risk in the Goods and Deliverables shall pass to the Customer on completion of delivery.

7. PRICE AND PAYMENT

- 7.1. The price of the Goods and/or Services shall be the price set out in the Order.
- 7.2. The price of the Goods and/or Services is exclusive of amounts in respect of value added tax ("**VAT**"), but includes the costs of packaging, insurance, customs duties, taxes and fees and carriage of the Goods and/or Deliverables and includes every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services. No extra charges shall be effective unless agreed in writing and signed by the Customer.
- 7.3. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services.
- 7.4. The Supplier shall invoice the Customer (in the Customer's agreed form which shall include a purchase order number and commodity codes) for the Goods and/or Services on or at any time after the completion of delivery.
- 7.5. The Customer shall pay correctly rendered invoices within 60 days of receipt of the invoice or such other time agreed in writing with the Supplier. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.6. If a party fails to make any payment due to the other under the Contract by the due date for payment ("**due date**"), then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.
- 7.7. The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

8. **INSURANCE AND INDEMNITY**

- 8.1. The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:
- 8.1.1. any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 8.1.2. any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- 8.1.3. any claim made against the Customer for actual or alleged infringement of a third party's IPR arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.
- 8.2. During the term of the Contract and for a period of 24 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 8.3. This clause 8 shall survive termination of the Contract.

9. **INTELLECTUAL PROPERTY RIGHTS**

- 9.1. In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.
- 9.2. The Supplier hereby assigns to the Customer, with full title guarantee and free from all third party rights, all IPR in the products of the Services, including for the avoidance of doubt the Deliverables.
- 9.3. The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 9.4. The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the IPR assigned to the Customer in accordance with clause 9.2.
- 9.5. All Customer Materials are the exclusive property of the Customer.

10. **CONFIDENTIAL INFORMATION**

- 10.1. A party (**receiving party**) shall keep in strict confidence (save for disclosure under direction of law or disclosure to employees on a 'need to know' basis) all technical or commercial know-how, Specifications, inventions, processes or initiatives which are 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, its products or its services which the receiving party may obtain.

11. **TERMINATION**

- 11.1. The Customer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work.
- 11.2. The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 11.2.1. The Supplier commits a breach of the Contract;
- 11.2.2. the Supplier becomes subject to any of the following events: (a) the Supplier 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; (b) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- 11.3. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. **FORCE MAJEURE**

- 12.1. Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is directly caused by an unforeseeable act of God or nature, war, terrorism or epidemic provided that the Supplier shall use its best endeavours to resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 15 Business Days, the Customer may terminate this Contract immediately by giving written notice to the Supplier.

13. **GENERAL**

- 13.1. The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

- 13.2. The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the Customer's prior written consent.
- 13.3. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case), and shall be sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail and shall be deemed received one business day after sending
- 13.4. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy.
- 13.5. A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 13.6. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer.
- 13.7. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

14. **INTERPRETATION**

- 14.1. In this agreement the following words and expressions have the following meanings:

“Business Day”	means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
“Conditions”	means the terms and conditions set out in this document as amended from time to time in accordance with clause 13.6;
“Contract”	means the contract between the Customer and the Supplier for the sale and purchase of the Goods and/or Services in accordance with these Conditions;
“Customer”	means ICS Cool Energy Limited (registered in England and Wales with company number 5509182);
“Deliverables”	All documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
“Goods”	means the goods (or any part of them) set out in the Order;
“IPR”	all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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, 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”	means the Customer's order for the Goods and/or Services, as set out in the Customer's purchase order form;
“Services”	The services, including any Deliverables to be provided by the Supplier under the Contract as set out in the Customer's purchase order form;
“Specification”	means any specification for the Goods and/or Services that is agreed in writing by the Customer and the Supplier;
“Supplier”	means the person or firm from whom the Customer purchases the Goods and/or Services.

- 14.2. In these Conditions, unless the context requires otherwise, the following rules apply:
- 14.2.1. Clause headings shall not affect the interpretation of these Conditions;
- 14.2.2. A reference to a party includes its personal representatives, successors or permitted assigns;
- 14.2.3. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 14.2.4. Any words following the terms including, include or any similar expression is illustrative and does not limit the sense of the words or term preceding those terms.