



STANDARD TERMS OF PURCHASE

1) DEFINITIONS

The following expressions shall have the following meanings in these Conditions and (unless expressly indicated to the contrary) in any document or form referred to in these Conditions:

- 1.1 "Buyer" shall mean SAACKE Combustion Services Limited (Company Number 7184556) whose registered office is at Langstone Technology Park, Langstone Road, Havant, Hampshire, PO9 1SA, United Kingdom.
- 1.2 "Buyer's Customer" shall mean the ultimate recipient of the Goods and/or Services ordered by the Buyer under the Purchase Order.
- 1.3 "Conditions" shall mean standard terms and conditions of purchase set out in this document as amended by the Buyer from time to time.
- 1.4 "Contract" shall mean the contract between the Buyer and the Seller for the purchase and supply of Goods and/or Services in accordance with these Conditions.
- 1.5 "Contract Price" shall mean the price of the Goods and/or the charge for the Services.
- 1.6 "Goods" shall mean plant, machinery, components and raw materials, of all kinds provided under any Contract to the Buyer.
- 1.7 "Intellectual Property Rights" shall mean any patents, trade marks, service marks, trade names, copyright (including rights in computer software and in websites), semiconductor topography rights, database rights, design rights, registered designs, know-how, and all and any other intellectual property, rights or forms of protection of a similar nature subsisting anywhere in the world.
- 1.8 "Purchase Order" shall mean the Buyer's order for the supply of Goods and/or Services as set out in the Buyer's purchase order form.
- 1.9 "Services" shall mean attendance, installation, testing and/or commissioning work to be carried out at site under any Contract to the Buyer.
- 1.10 "Seller" shall mean any person providing Goods and/or Services under any Contract to the Buyer.
- 1.11 "Specification" shall mean any plans, drawings, data or other information relating to the Goods or Services.
- 1.12 "Sub-Contractor" shall mean any sub-contractor the Buyer agrees that the Seller may appoint in accordance with clause 6.

2) INCORPORATION

- 2.1 The Purchase Order constitutes an offer by the Buyer to purchase Goods and/or Services from the Seller in accordance with these Conditions.
- 2.2 The Purchase Order shall be deemed to be accepted on the earlier of:
 - (a) the Seller issuing written acceptance of the Purchase Order; or
 - (b) any act by the Seller consistent with fulfilling the Purchase Orderat which point and on which date the Contract shall come into existence.
- 2.3 The Conditions govern the Contract to the exclusion of any other terms and conditions not incorporated in the Purchase Order or any other documents issued by the Seller.
- 2.4 No Goods or Services shall be supplied without the Buyer's written Purchase Order and the Buyer shall not be bound by any variation waiver of or addition to these Conditions except as agreed in writing and signed by a person duly authorised by the Buyer.
- 2.5 The Purchase Order will lapse unless accepted by the Seller in writing within ten days of its date.

3) CONTRACT PRICE

- 3.1 Unless otherwise agreed in writing by the Buyer, the Contract Price as shown in the Purchase Order is fixed and shall not be varied for the duration of the Contract.
- 3.2 The Contract Price shall be:-



- (a) exclusive of applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
- (b) inclusive of all charges for, packaging, cases, containers, packing, shipping, carriage, insurance and delivery of the Goods and duties, imposts or levies other than value added tax.

4) SPECIFICATION AND WARRANTIES

- 4.1 All Goods and Services supplied must be in accordance with the description contained within the Purchase Order and any applicable Specification or sample supplied by the Buyer to the Seller or agreed in writing by the Buyer.
- 4.2 The Seller warrants to the Buyer that the Goods:-
 - (a) will 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 Seller or made known to the Seller in writing at the time the Purchase Order is placed;
 - (b) will be free from defects in design, materials and workmanship; and
 - (c) will correspond with the Purchase Order and any relevant Specification or samples.
- 4.3 The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- 4.4 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.
- 4.5 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer in connection with the Contract, together with the Intellectual Property Rights in the Specification, shall be the exclusive property of the Buyer and the Seller assigns with full title guarantee to the Buyer all such Intellectual Property Rights for no further consideration, subject only to the payment of the Contract Price. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller or as required for the purposes of the Contract.
- 4.6 The Seller shall be responsible for any discrepancies, errors or omissions in any Specification supplied by him for the purpose of this Purchase Order whether or not the Buyer has approved such Specification.
- 4.7 The Seller warrants that no defects were drawn to the Buyer's attention prior to this Contract being made.

5) LIABILITIES AND INDEMNITIES

- 5.1 The Seller acknowledges that it is engaged by the Buyer for its ability and expertise in providing the Goods and/or Services, upon which the Buyer will rely.
- 5.2 The Seller warrants that for a period of 24 months from receipt of the Goods or completion of the Services (whichever is the later) the Goods and/or Services will be fit EITHER for the purpose which was notified to the Seller by the Buyer at the time of the Purchase Order OR, if no such notification was given, for the purposes for which it is ordinarily supplied by the Seller.
- 5.3 Without limitation to the rights and remedies of the Buyer in clause 5.4, in the case of Goods and/or Services which do not comply with the warranty set out in clause 5.2, the Buyer shall be entitled, at the Buyer's option:-
 - (a) to require the Seller to:-
 - (i) repair the Goods either at the Buyer's premises, the Buyer's Customer's premises or another site; or
 - (ii) replace the Goods or defective part of such Goods; or
 - (iii) re- perform the Services to the Buyer's satisfaction;

in each case within seven days of a request by the Buyer to do so; and



- (b) without first exercising its rights under clause 5.3.(a) (or where the Buyer has exercised its rights under clause 5.3(a) but the Seller has not met the Seller's further obligations within the specified time limit), to:-
 - (i) treat the Contract as discharged by the Seller's breach;
 - (ii) reject the Goods; and
 - (iii) either withhold payment of the Contract Price or require the repayment of any part of the Contract Price that has been paid.

5.4 The Seller will promptly indemnify and keep the Buyer indemnified and held harmless from and against all claims, actions, liabilities, demands, costs, losses, damages and expenses it suffers whether during or after the expiry or termination of this Contract (in part or in its entirety, unless previously agreed in writing) including, without limitation, any:-

- (a) economic loss and/or loss of profit;
- (b) indirect, special or consequential loss;
- (c) legal expenses;
- (d) loss or damage arising from any claim for compensation;
- (e) damage to goodwill or reputation; and
- (f) loss and/or damage suffered as a result of any action brought by a third party including, without limitation, the Buyer's Customer

arising directly or indirectly from any breach of this Contract (including without limitation breach of any warranty in relation to the Goods and/or Services), non performance of this Contract by the Seller, breach of any legal requirement; and/or any negligent act or omission of the Seller or its staff, agents, Sub-Contractors.

5.5 The Seller undertakes to take out and maintain adequate insurance cover with an insurance company of good repute against such liabilities. The Seller shall on the request of the Buyer produce a copy of such insurance policy and a receipt for the payment of the current premium.

6) SUB-CONTRACTING

- 6.1 Unless agreed in writing by the Buyer no part of the Purchase Order shall be sub-contracted.
- 6.2 Where the Buyer agrees that all or part of the rights and obligations of the Seller may be sub-contracted by the Seller, the sub-contract shall be recorded in writing and shall impose on and secure from the Sub-Contractor obligations, warranties, acknowledgements and grants of rights equivalent to those imposed on and secured from the Seller in these Conditions in each case for the benefit of the Buyer, such provisions to be directly enforceable by the Buyer under the Contract (Rights of Third Parties) Act 1999 ("the Relevant Conditions").
- 6.3 The Seller shall be responsible for the observance and performance by the Sub-Contractor of the Relevant Conditions and shall be directly liable to the Buyer for any breach by the Sub-Contractor of any of the Relevant Conditions and any such breach shall constitute a material breach of this Contract.
- 6.4 A copy of all such sub-contracts must be provided to the Buyer within seven days of being entered into.

7) PROGRESS INSPECTION AND CERTIFICATION

- 7.1 The Buyer reserves the right both for itself and its nominees to inspect the progress of the supply of Goods and/or Services under the Purchase Order or any part of the Goods and/or Services at any time before delivery. Such inspection shall not relieve the Seller from any responsibility or liability. The Buyer may adopt any reasonable means to satisfy itself that the Goods and/or Services shall be supplied by the Seller in accordance with the Purchase Order and any Specification and the Buyer shall have the right to reject any part of the Goods and/or Services which does not conform with the Purchase Order and any Specification. If any Goods or Services are rejected the Seller shall immediately on written notice take such remedial action necessary to supply the Goods and/or Services to the Buyer's satisfaction in accordance with the Purchase Order and any Specification.



- 7.2 Where EITHER the Seller has taken the necessary remedial action in accordance with clause 7.1 before delivery OR the Seller has failed to take such remedial action and the Goods and/or Services are supplied which do not conform with the Purchase Order and any Specification the Buyer shall have the right exercise its rights under clause 5.3.
- 7.3 Where test and inspection certificates are required by the Buyer the Seller shall supply such certificates in triplicate free of charge on delivery the Goods, or in the case of Services, immediately on completion of the Services or any stage of the Services (where a programme of supply has been agreed). One copy of all certificates shall be supplied with the Goods and two copies shall be supplied to the Buyer separately packaged from the Goods. In default of compliance with the foregoing the Buyer shall be entitled to refuse to accept or pay for the Goods or Services until such time such certificates are supplied by the Seller.
- 7.4 All welding services shall be carried out by appropriately certified welders as defined on the SAACKE Combustion Services Limited drawing, purchase order or supplier quotation. Certification must be provided upon request.
- 7.5 Audit rights. Purchaser will be entitled on reasonable notice to Supplier to access by itself or its representatives (including authorized third party) relevant Supplier sites where Goods are being processed, produced or packaged, or Services are being performed, for the purpose of ensuring Supplier's compliance.

8) PERFORMANCE AND DELIVERY

- 8.1 The Seller shall deliver the Goods or Services at his expense to the site as specified in the Purchase Order.
- 8.2 Performance by the Seller shall be in accordance with the dates specified in the Purchase Order or in any programme of supply agreed in writing by the Buyer and time shall be of the essence in the Contract.
- 8.3 The Seller will mark and dispatch Goods in accordance with the Buyer's instructions ensuring that each separate package and each item referred to in the Purchase Order is easily identifiable against the Buyer's order number. On dispatch of Goods the Seller must forward a detailed advice note in duplicate clearly stating the Buyer's Purchase Order number, contract reference and item number and method of dispatch otherwise payment may be delayed.
- 8.4 Without prejudice to any rights under the Contract and in particular the right of the Buyer to terminate the Contract, Goods not dispatched in time to reach the Buyer by the date specified in the Purchase Order shall be re-delivered at the Sellers expense by such means and to such locations as the Buyer shall reasonably require.
- 8.5 The Seller shall not deliver the Goods in installments without the Buyer's prior written consent. Where it is agreed that the Goods are delivered by installments, they may be invoiced and paid for separately. However, failure by the Seller to deliver any one installment on time or at all or any defect in an installment shall entitle the Buyer to the remedies set out in clause 14 and 16.
- 8.6 Where requested empty packages will be returned after delivery at the Sellers risk and expense.
- 8.7 The Seller shall acknowledge receipt of Purchase Order and confirm price & delivery dates.

9) RISK AND PROPERTY

- 9.1 The risk in the Goods shall remain with the Seller until they are delivered at the point specified in the Purchase Order.
- 9.2 In the case of Goods supplied with Services the risk remains with the Seller until completion of the supply of the Services in accordance with the Purchase Order.
- 9.3 The property in the Goods shall pass to the Buyer on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

10) CONFIDENTIALITY

Any Specification, plans, drawings, patterns or designs (and any Intellectual Property Rights contained within such documents) supplied by the Buyer to the Seller in connection with any Purchase Order shall remain the property of the Buyer and any information derived from such documents or otherwise communicated to the Seller in connection with the Contract shall be



secret and confidential and shall not without the consent in writing of the Buyer be published or disclosed to any third party or made use of by the Seller except for the purpose of performing the Contract.

11) TERMS OF PAYMENT

- 11.1 Payment shall be conditional upon the Goods and/or Services being of satisfactory quality and in all respects in accordance with the Purchase Order.
- 11.2 Unless otherwise agreed in writing by the Buyer, the Buyer shall pay to the Seller the Contract Price within 60 days of the receipt of an invoice (in the form referred to in Clause 11.3) or, if later, of acceptance of the relevant Goods / Services by the Buyer .
- 11.3 Before the Buyer shall be obliged to make any payment which shall otherwise be due to the Seller under the Contract the Buyer must have received from the Seller an invoice which must be correct in all material respects and properly addressed and referenced (and constituting a tax invoice in the case of Seller registered for VAT purpose).

12) INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Seller will indemnify the Buyer against any claim for infringement of Intellectual Property Rights by the use or sale of any article or material supplied by the Seller to the Buyer, provided always that the indemnity shall not apply to any infringement which is due to the Seller having followed a Specification, design or instructions furnished or given by the Buyer.
- 12.2 In respect of the Goods and any goods transferred to the Buyer as part of the Services under this Contract, the Seller warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items, the Seller will have full and unrestricted rights to sell and transfer all such items to the Buyer.
- 12.3 The Seller assigns to the Buyer, with full title guarantee and free from all third party rights, all Intellectual Property Rights arising out of or in relation to the performance of the Services.
- 12.4 The Seller shall obtain waivers of all moral rights in the products 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.

13) SITE WORK

- 13.1 Where the Purchase Order requires the Seller, its employees, sub-contractors or agents to perform the Services on the Buyer's premises, the Buyer's Customer's premises or any other site, the Seller shall ensure that throughout the performance of the Services such personnel as are on the Buyer's premises, the Buyer's Customer's premises or other sites observe and comply with:-
 - (a) all relevant statutory rules and regulations;
 - (b) all health and safety rules and regulations;
 - (c) any security regulations; and
 - (d) any other rules and regulations specified by the Buyer or the Buyer's Customer. .
- 13.2 All surplus materials not used, or redundant equipment, are to be removed from the Buyer's premises, Buyer's Customer's premises or other sites at the Seller's expense.
- 13.3 During the continuance of the Contract and whilst on the Buyer's premises or other sites on which the Buyer is working the Seller shall not perform any additional work for the Buyer's Customer without first receiving the Buyer's agreement in writing.

14) SPECIAL CONDITIONS

It the event of any conflict or inconsistency between any special conditions specified on the Purchase Order (or otherwise agreed in writing by the Buyer) and these Conditions, the special conditions shall prevail. Save as aforesaid, these Conditions shall apply to the Contract.

15) TERMINATION

- 15.1 The Buyer may cancel the Purchase Order in respect of all or part only of the Goods and/or the Services or suspend any future deliveries to and/or performance of the Services for the Buyer by giving notice to the Seller at any time prior to or during delivery or performance, in which event



the Buyer's sole liability shall be pay to the Seller for any part of the Contract already carried out (whether completed or not) on a time and materials basis and for materials purchased for the Buyer in pursuance of the Contract.

15.2 Without prejudice to the Buyer's rights or remedies set out elsewhere in these Conditions, the Buyer may terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

- (a) the Seller commits a material or persistent breach of the Contract and (if the breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
- (b) the Seller is unable to pay its debts, enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation), compounds with or convenes a meeting with its creditors, has a receiver or manager or administrator appointed, or ceases for any reason to carry on business.

16) LAW

The construction, validity and performance of these Conditions and the Contract shall be governed by the laws of England. The rights of the Buyer set out in these Conditions are in addition to the Buyer's rights at common law.

17) FORCE MAJEURE

The Buyer shall be under no liability for delay in performing or failure to perform provisions of the Contract if the delay or failure results from any reason beyond its control including (but not limited to) Act of God, legislation, war, terrorism, fire, flood, drought, failure of power supply, plant and machinery failure, lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute or owing to any inability to procure materials required for the performance of the Contract. Such delay or failure shall not constitute a breach of the Contract and the time for performance shall be extended by a period equivalent to that during which the performance is so prevented. The Buyer reserves the right to exercise all or any of its rights under the Contract during the period of such force majeure.

18) GENERAL

- 18.1 A notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principle place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.
- 18.2 If any provision of these Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 18.3 A person who is not a party to this Contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of such Contract. This does not affect any right or remedy of such person which exists or is available apart from that Act.
- 18.4 Nothing in these Conditions nor any Contract incorporating these Conditions shall create, or be deemed to create, a partnership or a joint venture or the relationship of employer and employee or principal and agent between the parties and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 18.5 Any reference in this Contract to "writing" or any related expression includes a reference to facsimile transmission, e-mail or comparable means of communication.