



## PURCHASE ORDER TERMS AND CONDITIONS

### 1. DEFINED TERMS AND INTERPRETATION

- 1.1 The following words and expressions shall have the meaning ascribed to them when used in the CONTRACT
- (a) "AFFILIATE" means in relation to a company, any company that is either (a) a subsidiary of such company, (b) a company of which such company is a subsidiary, (c) the holding company of such company, or (d) any other subsidiary of the holding company of such company. For the purposes of this definition, "subsidiary" and "holding company" shall have the meaning assigned to them under Section 1159 of the Companies Act, 2006, as amended.
  - (b) "CLIENT" means any third party to which COMPANY subsequently re-sells or passes on the GOODS.
  - (c) "COMPANY" means North Sea Power Solutions Limited.
  - (d) "COMPANY GROUP" means COMPANY and its AFFILIATES, the CLIENT, the CO-VENTURERS and their AFFILIATES and COMPANY'S other contractors, excluding contractors providing air transportation, and their respective subcontractors (of any tier), and the agents, officers, directors and employees of all of them and shall not include any member of the SUPPLIER GROUP.
  - (e) "COMPANY REPRESENTATIVE" means the person identified as such on the face of the ORDER.
  - (f) "CONTRACT" means these General Terms and Conditions and the Purchase Order ("ORDER") to which these General Terms and Conditions are attached (as amended by any special conditions that may be agreed) and any specifications, drawings or other documents attached or referred to on the face of the ORDER.
  - (g) "CO-VENTURERS" means any other entity with whom the CLIENT is or may be from time to time a party to a joint operating agreement or unitisation agreement or similar agreement relating to the operations for which the GOODS are being provided and the successors in interest of such CO-VENTURER or the assignees of any interest of such CO-VENTURER.
  - (h) "DATA PROTECTION LEGISLATION" shall mean the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.
  - (i) "DELIVERY DATE" means the date(s) upon which the GOODS shall be delivered as specified in the ORDER
  - (j) "GOODS" means any and all materials, plant, equipment, goods, products or other articles which SUPPLIER is required to provide, in accordance with the ORDER
  - (k) "ORDER" means the contract formed by the acceptance of this purchase order and shall incorporate these Purchase Order Terms and Conditions
  - (l) "PARTY" means COMPANY or SUPPLIER as the context so permits and "PARTIES" means both of them together.
  - (m) "PROPRIETARY INFORMATION" shall mean all data and/or information which SUPPLIER and its directors, employees, servants, and/or agents directly or indirectly acquire from COMPANY GROUP or from the provision of the GOODS or any other information concerning the technical and business activities and know-how of COMPANY GROUP. SUPPLIER shall not disclose any PROPRIETARY INFORMATION to any third party nor use PROPRIETARY INFORMATION, other than on COMPANY'S behalf except as COMPANY may otherwise authorise in writing.
  - (n) "SUPPLIER" means the person or firm or company to whom this CONTRACT has been issued.
  - (o) "SUPPLIER GROUP" means SUPPLIER and its AFFILIATES, SUB-CONTRACTORS (of any tier) and their affiliates, and the agents, officers, directors and employees of all of them and shall not include any member of the COMPANY GROUP.
  - (p) "SUPPLIER REPRESENTATIVE" means the person identified as such on the face of the ORDER.
  - (q) "WILFUL MISCONDUCT" means intentional, conscious or reckless disregard of any provisions of the CONTRACT by any director, officer, or employee of any PARTY or by any other personnel, agent or contractor of the PARTY in question in the exercise of any function, authority or discretion conferred upon respectively such PARTY thereunder, but shall not include any error of judgement or mistake made in the exercise in good faith of any function, authority or discretion vested in or exercisable by any such director, officer, or employee, or by any other personnel, agent or contractor of the PARTY in question.



- 1.2 In the event of any conflict between these General Terms and Conditions and any special conditions agreed between the COMPANY and any member of SUPPLIER GROUP in relation to the ORDER, the special conditions shall prevail.
- 1.3 These General Terms and Conditions shall have precedence over any conditions appearing on any acceptance form or other document or letter emanating from any member of SUPPLIER GROUP in connection with performance of this ORDER, and such conditions shall have no effect whatsoever.
- 1.4 SUPPLIER shall not commence delivery of the GOODS before signing and returning to COMPANY a copy of the ORDER. If SUPPLIER or any member of SUPPLIER GROUP commences delivery of the GOODS or submits an invoice under this ORDER without having signed the ORDER, SUPPLIER shall be deemed to have accepted the terms and conditions herein without exception.

## **2. GOODS/SERVICES**

SUPPLIER will sell the GOODS to the COMPANY and the COMPANY shall acquire the GOODS on the terms set out in the ORDER.

## **3. TITLE TO GOODS**

SUPPLIER shall have title to and bear the risk of loss or damage to the GOODS, until their delivery to the destination described in the ORDER, or pursuant to Clause 4 – Hazardous Materials or Clause 10 – Rejection. Upon delivery of the GOODS, title and risk shall transfer to the COMPANY.

## **4. HAZARDOUS MATERIALS**

- 4.1 SUPPLIER warrants and represents that the GOODS will comply with the requirements of law and, to the extent that they contain toxic, corrosive, or hazardous materials, SUPPLIER will ensure that a notice to that effect accompanies each consignment, together with appropriate care and handling instructions.
- 4.2 GOODS supplied under the ORDER, which are contaminated beyond use, at the time of delivery, shall be regenerated or disposed of by SUPPLIER. The title and risk of the contaminated GOODS will transfer to SUPPLIER, at the time contamination is identified and notified to SUPPLIER, who will bear all expenses for the said processes.

## **5. QUALITY AND SAFETY**

SUPPLIER warrants and represents that the GOODS shall be supplied in accordance with the specifications or drawings (if any) attached to the ORDER and comply with the requirements of law. In the absence of any specifications or drawings, SUPPLIER warrants and represents that the GOODS shall be of satisfactory quality of their respective type, free from defects and hazards and fit for the purpose for which they are intended and shall be subject to all warranties express or implied by law whether under statute or otherwise. SUPPLIER shall be responsible for safe execution of all processes leading to delivery of the GOODS.

## **6. DELIVERY DATE**

SUPPLIER shall deliver the GOODS to COMPANY on the delivery date or dates pursuant to the ORDER. SUPPLIER shall notify COMPANY of any event likely to cause a delay within twenty-four (24) hours of that event first becoming apparent to SUPPLIER. In the event the GOODS are not delivered on the delivery date or dates pursuant to the ORDER, and without limiting any of the COMPANY's rights or remedies; the COMPANY has the right to terminate the CONTRACT, reject the GOODS and return them to SUPPLIER at the SUPPLIER'S own risk and expense and/or claim damages for any costs, loss or expenses incurred by the COMPANY which are in any way attributable to the SUPPLIER'S failure to carry out its obligations under the CONTRACT.



## **7. DELIVERY POINT**

SUPPLIER shall deliver the GOODS Deliver Duty Paid (DDP Incoterms 2010) to COMPANY or alternatively as specified on ORDER at the destination specified in the ORDER. The GOODS shall be adequately packed and protected for shipment and short-term storage. Signature, by COMPANY, of any GOODS received notes or similar SUPPLIER'S documents shall denote GOODS received unchecked and shall not denote acceptance.

## **8. MANUFACTURING PROGRESS**

SUPPLIER shall prepare (and provide COMPANY with copies of) such schedules as may be necessary for orderly production of the GOODS. SUPPLIER shall afford access to and shall co-operate with COMPANY for the purpose of monitoring and expediting progress.

## **9. INSPECTION AND TESTING**

SUPPLIER shall inspect the GOODS and certify them to be in accordance with the ORDER. SUPPLIER shall allow access to COMPANY during manufacture, whether at SUPPLIER'S premises or otherwise, for the purpose of inspection and testing of the GOODS. Any inspection, testing, approval or release shall not constitute acceptance of the GOODS or relieve the SUPPLIER of any liability.

## **10. REJECTION**

Should COMPANY find any of the GOODS not to be in accordance with the ORDER and without limiting any other rights or remedies of the COMPANY, the COMPANY may, prior to effecting payment for the GOODS, reject defective or deficient GOODS (in whole or in part) and return them to the SUPPLIER at the SUPPLIER's own risk, purchase conforming GOODS elsewhere, recover from the SUPPLIER any costs incurred by the COMPANY in obtaining substitute GOODS from a third party. Before exercising this right to purchase GOODS elsewhere COMPANY shall afford to SUPPLIER the right to repair or replace defective or deficient GOODS or to substitute non-conforming GOODS with conforming GOODS at no cost to COMPANY. Title and risk in and to any rejected GOODS shall re-vest in SUPPLIER on return to SUPPLIER.

## **11. WARRANTY**

- 11.1 SUPPLIER warrants and represents that the GOODS shall be delivered to COMPANY in accordance with the requirements of Clauses 4 and 5. Should any defects, deficiencies or non-conformities become apparent within either twelve (12) months from putting into service or eighteen (18) months of delivery, whichever the shorter, COMPANY shall notify SUPPLIER accordingly and, notwithstanding the provisions of Clause 10, SUPPLIER shall as soon as reasonable practicable repair or replace such defective, deficient or non-conforming GOODS to COMPANY'S satisfaction at SUPPLIER'S own liability and expense or provide a full refund for the GOODS. Repairs and/or replacements shall themselves be subject to the foregoing warranty obligations for a further twelve (12) month period from the date of delivery.
- 11.2 If SUPPLIER is notified by COMPANY to repair or replace the GOODS found to be deficient, defective or non-conforming and SUPPLIER states, or by its actions indicates, that it is unwilling to effect the repairs or replacements COMPANY may, upon written notice to SUPPLIER, accomplish repairs or replacements and COMPANY'S costs so incurred shall be for SUPPLIER'S account.
- 11.3 The COMPANY shall have the right to elect to perform repairs or replacements offshore (that would otherwise have been the responsibility of SUPPLIER). In the event the COMPANY elects to perform repairs and replacements then SUPPLIER shall be notified accordingly and an amount equal to SUPPLIER'S cost that SUPPLIER would have incurred in effecting the remedial works at its own premises, shall be for SUPPLIER'S account.

## **12. DOCUMENTATION AND MANUALS**



SUPPLIER shall when required by COMPANY supply all relevant data and documentation relating to the ORDER to enable the COMPANY and/or the CLIENT to satisfy the appropriate certification bodies.

### **13. DRAWING APPROVAL**

Where applicable SUPPLIER shall submit drawings, specifications and any other relevant data to COMPANY for review and approval (including, where relevant, review and approval by CLIENT). Such review and approval shall not relieve SUPPLIER of its obligations under the ORDER.

### **14. PAYMENT**

- 14.1 The price COMPANY has agreed to pay for the GOODS is set out in the ORDER. Value Added Tax, where applicable, shall be shown separately on SUPPLIER'S invoice.
- 14.2 SUPPLIER shall submit invoices to COMPANY in an acceptable format at or after the time of delivery of the GOODS. Each invoice shall quote the ORDER number and be accompanied by such documentation as COMPANY may reasonably require to verify correctness of items invoiced. COMPANY shall effect payment to SUPPLIER within sixty (60) days of receipt of a correctly presented invoice. Payment shall not be deemed to be acceptance of the GOODS.
- 14.3 Invoices shall be submitted to COMPANY at North Sea Power Solutions Limited, Unit 11 Clinterty Business Park, Kinellar, Aberdeenshire AB21 0TZ (marked for the attention of the Accounts Payable).
- 14.4 The COMPANY may at any time, without limiting any of its rights or remedies, set off, withhold or deduct any liability of the SUPPLIER to the COMPANY against any liability of the COMPANY to the SUPPLIER.

### **15. ASSIGNMENT AND SUB-CONTRACTING**

- 15.1 This ORDER shall neither be assigned by SUPPLIER nor sub-contracted in whole or in part without COMPANY'S prior written consent. The restriction contained in this Clause 15 shall not apply to sub-contracts for minor materials or details or for any part of the GOODS for which sub-contractors have been nominated in the ORDER. SUPPLIER shall remain primary responsible for items supplied or work done by sub-contractors.
- 15.2 Unpriced copies of each approved sub-contract document shall be sent promptly, by SUPPLIER to COMPANY, upon request.

### **16. FORCE MAJEURE**

- 16.1 Neither a failure nor an omission by either COMPANY or SUPPLIER to carry out or observe any of the stipulations, conditions or obligations described in the ORDER shall give rise to any claim against the other PARTY or be a breach of contract if such failure or omission arises from a cause reasonably beyond the control of the PARTY claiming FORCE MAJEURE. If the period of the delay or non- performance continues for thirty (30) days, the PARTY not affected may terminate this CONTRACT upon reasonable notice.
- 16.2 FORCE MAJEURE shall mean any cause beyond the reasonable control of the PARTIES but shall not include any industrial dispute, strike or lockouts involving SUPPLIER'S workforce and shall not include any delays or failure to perform due to the weather.

### **17. PROPRIETARY INFORMATION AND PATENT INDEMNITY**

- 17.1 SUPPLIER shall be liable for and shall defend, indemnify and hold COMPANY harmless from and against any and all claims for infringement of patent, design, trade mark, copyright or any other intellectual property right arising from the use or sale of the GOODS and against all costs and damages for which COMPANY may become liable in any such action. SUPPLIER shall promptly secure the lawful use of the GOODS or at its option substitute the same with non-infringing GOODS.



- 17.2 Notwithstanding any other term of the CONTRACT, the SUPPLIER shall not be liable in respect of any such PROPRIETARY INFORMATION which was or is:
- (a) available to the public at the time of the disclosure or any other time thereafter;
  - (b) already known by SUPPLIER at the time of the disclosure and not subject to any other restriction or confidentiality obligation;
  - (c) independently developed by SUPPLIER without the use of PROPRIETARY INFORMATION; and
  - (d) or becomes known to SUPPLIER from a source other than COMPANY without breach of a contractual obligation.
- 17.3 Any intellectual property rights arising from the performance of the CONTRACT shall become the property of the COMPANY and the SUPPLIER shall not disclose the same to any third party. The SUPPLIER shall do all such things necessary to assign such proprietary rights to the COMPANY or such third party as COMPANY may nominate.

## 18. LAWS AND REGULATIONS

SUPPLIER warrants that it shall comply fully and at all times with such national and local laws, regulations, rules and orders as may be applicable in both the jurisdictions where the GOODS are manufactured and delivered and SUPPLIER shall indemnify, defend and hold COMPANY harmless from and against any and all claims, demands, causes of action, losses, liabilities, costs and expenses (including but not limited to all related legal costs and expenses) imposed or asserted against COMPANY as a result, or by reason, of the failure or alleged failure of SUPPLIER to fully comply therewith.

## 19. LIABILITY AND INDEMNITY

- 19.1 SUPPLIER shall be responsible for, indemnify, defend and hold COMPANY GROUP harmless from and against any and all claims, demands, causes of action, losses, liabilities, costs and expenses (including but not limited to all related legal costs and expenses), in respect of:
- (a) personal injury to or sickness disease or death of the officers, employees and agents of SUPPLIER GROUP; and
  - (b) damage to or loss of any property owned by SUPPLIER GROUP or hired or leased by SUPPLIER GROUP under other agreements,
- arising from, relating to, or in connection with the performance or non-performance of the ORDER from any cause whatsoever including but not limited to that caused or contributed to by the negligence, breach of duty (whether statutory, contractual or otherwise) and/or other legal fault of COMPANY GROUP, but excepting any to the extent caused or contributed to by the WILFUL MISCONDUCT of COMPANY GROUP.
- 19.2 COMPANY shall be responsible for, indemnify, defend and hold SUPPLIER GROUP harmless from and against any and all claims, demands, causes of action, losses, liabilities, costs and expenses (including but not limited to all related legal costs and expenses) in respect of:
- (a) personal injury to or sickness, disease or death of the officers, employees and agents of COMPANY GROUP; and
  - (b) damage to or loss of any property owned by COMPANY GROUP or contracted to COMPANY GROUP under other agreements,
- arising from, relating to, or in connection with the performance or non-performance of the ORDER from any cause whatsoever including but not limited to that caused or contributed to by the negligence, breach of duty (whether statutory, contractual or otherwise) and/or other legal fault of SUPPLIER GROUP, but excepting any to the extent caused or contributed to by the WILFUL MISCONDUCT of SUPPLIER GROUP.
- 19.3 SUPPLIER shall be responsible for and shall save indemnify, defend and hold COMPANY GROUP harmless against any and all claims, demands, causes of action, losses, liabilities, costs and expenses (including but not limited to all related legal costs and expenses) in respect of personal injury, including sickness, death or disease or loss or damage to the property of any third party howsoever arising.
- 19.4 SUPPLIER shall be responsible for and shall save indemnify, defend and hold COMPANY GROUP harmless from and against any and all claims, demands, causes of action, losses, liabilities, costs and



expenses (including but not limited to all related legal costs and expenses) of whatsoever nature arising from the pollution emanating from any reservoir or from the property of SUPPLIER GROUP howsoever arising.

## **20. SPARES**

SUPPLIER shall give sufficient notice to the COMPANY of its intention to cease supply of GOODS, component parts or replacements, to enable the COMPANY to purchase such GOODS, component parts or replacements.

## **21. INSURANCE**

21.1 COMPANY and SUPPLIER shall maintain levels of insurance sufficient to cover their respective liabilities and obligations under the ORDER and at law. At a minimum, the SUPPLIER shall maintain, in full force and effect public and product liability insurance of not less than five (5) million pounds sterling during the period of the CONTRACT and on request provide evidence of such insurance.

21.2 All insurance required to be maintained under this CONTRACT shall be endorsed to provide that the underwriters waive any rights of recourse including in particular any rights of subrogation. The provision in the clause shall in no way limit the liability of the PARTIES under the CONTRACT.

## **22. CONSEQUENTIAL LOSS**

Neither COMPANY nor SUPPLIER shall bear any liability under the ORDER or at law, arising out of or in connection with the subject matter of the ORDER, to the other in respect of any loss of production, loss of profits, loss of business or any indirect or other consequential loss or damage, suffered by the other irrespective of whether such loss was caused by or contributed to by the sole or concurrent negligence or breach of duty, whether statutory or otherwise, of either party.

## **23. CONFIDENTIALITY**

COMPANY and SUPPLIER shall keep the ORDER and any information, which either PARTY learns about the other in strict confidence and will not disclose the same to any third party without the prior written consent of the other PARTY.

## **24. TERMINATION**

24.1 COMPANY may at its absolute discretion immediately terminate all or any part of the ORDER at any time and where SUPPLIER is not in default of the ORDER, COMPANY agrees to pay SUPPLIER for such of the GOODS delivered and SUPPLIER'S costs pursuant to the ORDER up to the time of termination, but such sum shall in no event exceed the price set out in the ORDER and in no event shall COMPANY be liable for the loss of any anticipated profits. SUPPLIER shall forward to COMPANY all completed or uncompleted drawings, reports and other documents

24.2 Clauses 17, 19, 22, 23, 28 and 29 shall survive the expiration or any termination of the ORDER and/or the CONTRACT.

## **25. LAW**

25.1 This ORDER shall be governed by and construed in accordance with the laws of Scotland and shall be subject to the exclusive jurisdiction of the Scottish Courts.

25.2 A person who is not a party to the ORDER (a "Third Party") shall have no right under the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any term of the ORDER or any amendment hereto. The foregoing provisions of this Clause 24 shall not affect any right or remedy of such Third Party which exists or is available apart from the Act.



## 26. ENTIRE AGREEMENT

This ORDER constitutes the entire agreement between the parties with respect to the GOODS and supersedes all prior negotiations, representations or agreements related to the ORDER, either written or oral. No variations to the ORDER shall be effective unless evidenced in writing and signed by the PARTIES to the ORDER.

## 27. SPECIAL TERMS

SUPPLIER and COMPANY agree that any special conditions set out in the ORDER will take precedence over the general terms and conditions set out above.

## 28. BUSINESS ETHICS

### 28.1 SUPPLIER shall:

- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the "RELEVANT REQUIREMENTS");
- (b) have and shall maintain in place throughout the terms of the CONTRACT its own policies and procedures including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the RELEVANT REQUIREMENTS and will enforce them where appropriate;
- (c) promptly report to COMPANY any request or demand for any undue financial or other advantage of any kind received by SUPPLIER in connection with the performance of the CONTRACT;
- (d) immediately notify COMPANY (in writing) if a foreign public official becomes an officer or employee of the SUPPLIER or acquires a direct or indirect interest in SUPPLIER (and SUPPLIER warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this CONTRACT); and
- (e) if required to do so by COMPANY, certify to COMPANY in writing signed by an officer of SUPPLIER compliance with this Clause 28 by SUPPLIER and all persons associated with it pursuant to Clause 28.2 below. SUPPLIER shall provide such supporting evidence of compliance as COMPANY may reasonably request.

28.2 SUPPLIER shall ensure that any person associated with SUPPLIER who is providing goods and/or services does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on SUPPLIER in this Clause 28 (the "RELEVANT TERMS"). SUPPLIER shall be responsible for the observance and performance by such persons of the RELEVANT TERMS and shall be directly liable to COMPANY for any breach by such persons of any of the RELEVANT TERMS.

28.3 For the purposes of this Clause 28, the meaning of adequate procedures and foreign public official and whether a person is "associated" with another person shall be determined in accordance with Section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 28 a person associated with SUPPLIER includes but is not limited to any subcontractor of SUPPLIER.

## 29. NON-COMPETE

SUPPLIER covenants and undertakes to COMPANY that during the CONTRACT and for a period of six (6) months after completion and/or termination of the CONTRACT it shall not:

- (a) seek the custom of any CLIENT in respect of the GOODS; or
- (b) seek to entice away or employ any employee, agent, contractor or sub-contractor of the COMPANY.

## 30. DATA PROTECTION

31.1 For the purposes of DATA PROTECTION LEGISLATION, SUPPLIER and COMPANY are both data controllers (where data controller has the meaning as defined in the DATA PROTECTION LEGISLATION).

31.2 Each PARTY will ensure it has the necessary appropriate consents and notices in place to enable lawful transfer of any personal data (where personal data shall be as defined in the DATA PROTECTION LEGISLATION) to the other PARTY as may be required for the purposes and duration of the CONTRACT.



- 31.3 Either PARTY shall on reasonable notice, and during normal office hours, allow a representative of the other PARTY to have access to its premises for the purposes of ensuring that the requirements of this Clause 31 have been complied with.

**END OF PURCHASE ORDER SHORT FORM TERMS & CONDITIONS.**