

### 1. TERMS AND CONDITIONS

- 1.1 The conditions of order set out hereafter shall govern the Order, along with any amendment made by the Company with the Supplier, and shall take precedence over the Supplier's terms and conditions notwithstanding any provision to the contrary in the Supplier's terms and conditions of supply (if any), and the Supplier shall be deemed to have agreed to the Company's Terms and Conditions by accepting the Order.
- 1.2 The Terms and Conditions set out hereafter shall not be varied unless such variation is agreed in writing by the Company, and endorsed upon the Order.

### 2. INTERPRETATION

- 2.1 The definitions and rules of interpretation in this condition apply in these conditions.  
**Company:** Arc Energy Resources Limited, the offices of which are based at Unit 12, Eastington Industrial Estate, Eastington, Glos., GL10 3RZ, registered in the UK under the number 2894008.  
**Supplier:** the person or company stated on the Order, and to whom the Order is addressed.  
**Goods:** any goods or services agreed in the Contract to be supplied to the Company by the Supplier (including any part or parts of them).  
**Contract:** any contract between the Company and the Supplier for the sale and purchase of the Goods, incorporating these conditions.  
**Specification:** any applicable documents, design, specifications, processes, know-how or other information relating to the Goods or their production supplied to the Supplier by the Company.  
**Order:** any purchase order from the Company for the Goods, incorporating these terms and conditions  
**Delivery Date:** the date specified by the Company for when the Goods are to be delivered to the Company.  
**Price:** the price for the Goods stated on the Order, exclusive of VAT (if applicable), but inclusive of carriage, freight, postage, insurance and other costs.
- 2.2 A reference to a particular law or standard is a reference to it as it is in force at the time of order placement, taking account of any amendment, extension, application or re-enactment.
- 2.3 Words in the singular include the plural and in the plural include the singular.
- 2.4 A reference to one gender includes a reference to the other gender.
- 2.5 Condition headings do not affect the interpretation of these conditions.

### 3. APPLICATION OF TERMS

- 3.1 Subject to any variation under clause 3.2 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Supplier purports to apply under any Order acknowledgement, specification or other document).
- 3.2 Any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Managing Director of the Company, or his designated deputy.
- 3.3 Each Order for Goods from the Supplier by the Company shall be deemed to be an offer by the Company to buy Goods subject to these conditions.
- 3.4 The Supplier shall ensure that the terms of the Order and any applicable Specification are rigorously adhered to.
- 3.5 Each Order is liable to cancellation by the Company if not unconditionally accepted by the Supplier within 7 days of Order placement.

### 4. CORPORATE SOCIAL RESPONSIBILITY

- 4.1 The Supplier implement best industry practice with regards to health, safety and the environment, and at a minimum, complies with all relevant legislation.
- 4.2 If the supplier is to supply any materials containing the minerals Tin, Tantalum, Tungsten or Gold, then the Supplier shall comply with the Dodd-Frank Act regarding conflict minerals, and shall confirm to the Company that these minerals are not sourced from within the Democratic Republic of Congo or adjoining countries. If they are sourced from within this area, then they shall be independently verified to be 'conflict-free.'

### 5. DESCRIPTION AND SPECIFICATION

- 5.1 The quantity, quality and description of the Goods shall, subject to these Terms and Conditions, be as specified in the Company's Order and/or in any applicable Specification supplied or advised by the Company to the Supplier.
- 5.2 Any Specification supplied by the Company to the Supplier, or specifically produced by the Supplier for the Company, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Company. The Supplier shall not without the Company's prior written consent disclose to any third party any such Specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract. The Supplier undertakes to deliver up such Specifications and other as mentioned to the Company forthwith at the Company's request and to execute such assignment as may be necessary to give effect to this condition.
- 5.3 All tools, fixtures, jigs, plant or special equipment provided by the Company to the Supplier shall remain the exclusive property of the Company and shall be maintained in good order and condition whilst in the Supplier's possession or control, and shall be insured by the Supplier in the name of the Buyer on an all-risks basis for their full replacement cost.
- 5.4 The Supplier shall not use the Company's property referred to in clauses 5.2 and 5.3 above, nor allow it to be used, for any purpose other than the supply of Goods in accordance with the Contract.
- 5.5 The Company shall mark the Company's property so that it is clearly identified as belonging to the Company, and the Supplier shall not deface, obliterate or remove such identifying marks except as required by the Order, in which case the markings shall

be reapplied after the work is complete. The Supplier shall permit the Company to enter premises where the Company's property is kept to inspect and/or take possession of the Company's property.

- 5.6 The Supplier shall comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of the goods.
- 5.7 The Supplier shall be responsible for repayment to the Company of all direct and indirect costs, losses, damages and expenses whatsoever incurred by the Company due to rejection of the Goods and/or any additional expenditure reasonably incurred by the Company in obtaining other Goods to replace the rejected Goods.
- 5.8 The Supplier acknowledges that precise conformity of the Goods with the Contract is of the essence of the Contract and the Company shall be entitled to reject the Goods if they are not in conformance with the Contract.
- 5.9 The Goods shall be marked in accordance with the Company's instructions and any applicable regulations or requirements of the carrier, and properly packed and stored so as to reach their destination in an undamaged condition in the ordinary course.
- 5.10 The Company may at any time make changes in writing relating to the Contract including, without limitation, changes in the drawings or Specifications, method of shipment, quantities, packing, or time or place of delivery. If such changes result in an increasing cost of, or time required for, the performance of the Contract, an equitable adjustment shall be made to the price and/or delivery schedule. Any claim or adjustment by the Supplier must be approved by the Company in writing before the Supplier proceeds with such changes.
- 5.11 The Goods shall be of the best available quality, and be without fault, and shall conform as to the quality, quantity and description with the particulars and/or Specifications in the Contract, and shall be new and unused unless otherwise specified.
- 5.12 The Goods shall be fit and sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Company, and the Company relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Order.

#### **6. DOCUMENTATION**

- 6.1 Documentation shall be submitted as called for in the Order. The Order shall not be considered complete for payment purposes until all documentation requirements have been fulfilled.
- 6.2 All other correspondence in connection with the Order shall state the Order number and item number, and shall be marked for the attention of the department or person(s) stipulated in the Order.
- 6.3 The Company's approval and/or comments on drawings, designs, calculations and Specifications shall not absolve the Supplier from responsibility for any design or construction errors.
- 6.4 The Company shall have the right at any time to receive certificates of origin of raw materials and parts of the Goods and such other certificates including, without limitation, test certificates, mill certificates, data books for pressure vessels etc., and certificates for equipment, as required by the Order or as the Company deems appropriate.

#### **7. AMBIGUITIES IN DATA SUPPLIED BY THE COMPANY**

- 7.1 Should there be any doubt or ambiguity in connection with the documentation or information contained within the Order and/or provided by the Company, the Supplier shall notify the Company as soon as the matter is identified, and obtain clarification from the Company in writing before the proceeding. Without such notification it shall be deemed that no such or ambiguity exists.

#### **8. DELIVERY**

- 8.1 The Goods shall be delivered to, and the services performed at, the delivery address on the date or within the period stated on the Order or delivery schedule, in either case during the Company's normal business hours.
- 8.2 In accordance with clause 6.1, where Goods are to be delivered within a period of time as may be specified in the Order or delivery schedule, such period of time shall commence from the date the Order is sent (if sent by e-mail or fax within ordinary working hours) or the following day (if sent first class by post), pursuant to clause 3.6.
- 8.3 If the Goods are not delivered or the services are not performed on the due date then, without prejudice to any other remedy, the Company shall be entitled to:-
  - (a) Deduct from the Price or (if the Supplier has paid the Price) claim from the Supplier by way of liquidated damages for delay 0.5% of the Price for every week's delay, up to a maximum of 10%, or
  - (b) Where such delay in delivery or failure to perform the services on the due date places the Company in breach of its obligations to a third party, the Supplier shall indemnify the Company up to the value to which the Company is liable to that third party.
- 8.4 Where access to the Company's premises is necessary in connection with the Order, the Supplier and its subcontractors shall at all times comply with the reasonable requirements of the Company with respect to quality, the environment, and health and safety.
- 8.5 Where the date of delivery of the Goods, or of performance of the services, is to be specified after placing of the Order, the Supplier shall give the Company reasonable notice of the specified date.
- 8.6 Where the delivery advice on the Order is marked 'as per delivery schedule,' delivery schedules shall be published periodically and specify future delivery requirements. Unless otherwise agreed, the Company will only be liable to take delivery of the Goods specified within a one month period commencing at the publication date of the delivery schedule. Any quantities shown later than that period are published by the Company in good faith, but the Company is not bound to accept delivery of these Goods or accept any liability for the information thus provided.
- 8.7 The Supplier shall ensure that each delivery is accompanied by a delivery note which is prominently displayed and which shows the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 8.8 Time for delivery shall be of the essence of the Contract.
- 8.9 The Goods shall be properly packed, clearly labelled and adequately protected against damage and deterioration in transit.

- 8.10 The Supplier will repair or replace Goods damaged or lost in transit or during off-loading or stacking free of charge, provided the Company gives notice to the Supplier of the damage or loss within a reasonable time after receipt of a delivery note.
- 8.11 The Supplier shall supply the Company on delivery of the Goods with all operating and safety instructions, warning notices clearly displayed, and other information as may be necessary for their proper use, maintenance and repair for the Company to accept delivery of the Goods.
- 8.12 Unless the Company expressly agrees otherwise in writing, containers and packing shall be supplied free by the Supplier, but may be returned, if required, at the Supplier's risk and expense. The Company may require the Supplier to remove the Supplier's packaging or packing materials for the Goods from the Company's premises within 30 days from the date of the Company's request, failing which, the Company shall, at its discretion, remove or destroy the packaging and/or packing materials.
- 8.13 Where more than one item of Goods is involved in the Order and the Company agrees to accept delivery by instalments, the Contract shall be construed as a separate Contract in respect of each instalment. Nevertheless, failure to deliver any instalment shall entitle the Company at its option to treat the entire Contract as repudiated.
- 8.14 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess, and any excess will be and remain at the Supplier's risk, and will be returnable at the Supplier's expense.
- 8.15 No Goods supplied under the Contract earlier than the date for delivery set out in these terms and conditions, or in any delivery schedule, will be accepted or paid for unless the Company notifies the Supplier in writing of its intention to accept the same. If early delivery of the Goods is accepted by the Company, the Supplier shall retain the risk until the date specified in the Order or delivery schedule, or upon expiry of the period of time specified therein.
- 8.16 The Company shall have the right to inspect and test the Goods at all times, and the Supplier shall not unreasonably refuse any request by the Company to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and the Supplier shall provide the Company with all facilities reasonably required for inspection and testing.
- 8.17 If, as the result of such inspection or testing, the Company is not satisfied that the Goods will comply in all respects with the Contract, and the Company so informs the Supplier within 30 days of inspection or testing, the Supplier shall take all steps necessary to ensure compliance. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods, and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 8.18 The Company may return any rejected Goods at the Supplier's risk and expense. The right to reject shall extend to the whole or any part of a consignment. Rejected Goods shall not be replaced unless the Company so requires in writing.
- 8.19 The Company shall not be deemed to have accepted the Goods until the Company has had 21 days to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. The signature of a Company representative is only evidence of the number of packages and/or services received, and not that they comply with these terms and conditions.
- 8.20 The Company reserves the right to reject any Goods delivered which are not in accordance with the Contract.
- 8.21 Where any Goods delivered are rejected by the Company, they may be returned to the Supplier at the Supplier's risk and expense.
- 8.22 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:-
- Cancel the Contract in whole or in part;
  - Refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make
  - Recover from the Supplier any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier, and
  - Claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.
- 8.23 Where the Company cancels a Contract or Order in accordance with clause 8.22:-
- All sums payable by the Company to the Supplier in relation to the whole or part of the Order cancelled shall cease to be payable.
  - All sums paid by the Company to the Supplier in relation to the whole or part of the Order cancelled shall be repaid by the Supplier.
- 8.24 If at any time after acceptance of the Goods a single item or several items thereof develop a fault, the Supplier shall, at its expense, re-inspect the entire batch. If the Supplier fails to make such re-inspection upon request by the Company, then the Supplier shall indemnify the Company for its time expended in making such an inspection.

## **9. PRICE AND PAYMENT**

- 9.1 Unless otherwise agreed, the Price payable for the Goods shall be:-
- That stated on the Order
  - Inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, documentation, insurance and delivery of the Goods to the delivery address, and any duties, levies or taxes other than value added tax;
  - Fixed for the duration of the contract; and
  - In the currency agreed between the Company and the Supplier, or, if no currency has been agreed, in GB Pound Sterling.
- 9.2 A valid VAT invoice in respect of the Price shall be produced to the Company by the Supplier. Unless otherwise agreed in writing by the Company, the invoice may only be submitted and dated after completed delivery of the relevant Goods, or completed performance of the relevant services. The invoice shall not be valid unless it states the invoice address, the Company purchase order number, the Supplier's VAT number, the net amount due, and the Supplier's full banking details.
- 9.3 Rejection of the invoice will result in the re-setting of the payment schedule until a proper invoice has been accepted by the Company.

9.4 Unless otherwise agreed in writing by the Company, the Company shall pay the Price to the Supplier within 60 days from the end of the month of receipt of the invoice.

9.5 The Company shall be entitled to set off against the Price any sums owed to the Company by the Supplier.

**10. RISK AND OWNERSHIP**

10.1 Risk in the Goods shall pass to the Company upon delivery to the Company in accordance with the Contract.

10.2 The ownership of the Goods shall pass to the Company upon delivery.

**11. WARRANTIES AND LIABILITY**

11.1 The Supplier warrants to the Company 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 Supplier or made known to the Supplier at the time of Order placement;
- (b) Will be free from defects in design, material and workmanship;
- (c) Will correspond with any relevant Specification;
- (d) Will comply with all relevant statutory requirements and regulations; and
- (e) Will be performed (in the case of services) by appropriately qualified and trained personnel, with due care and diligence, and to such high standard of quality as is reasonable for the Company to expect in all circumstances.

11.2 Without prejudice to any other remedy, if the Goods are not supplied or performed in accordance with the Contract, then the Company shall be entitled:-

- (a) To require the Supplier to repair the Goods or to supply replacement Goods in accordance with the Contract at the Company's discretion, within a reasonable period of time to be specified by the Company having regard to the circumstances; or
- (b) At the Company's sole option, and whether or not the Company has previously required the Supplier to repair Goods or to supply any replacement Goods, to treat the Contract as discharged by the Supplier's breach, and require the repayment of any part of the Price which has been paid; or
- (c) Where Goods are rejected, to obtain replacement Goods from an alternative supplier at the Supplier's expense; or
- (d) To carry out such works itself as may be required so that the Goods comply with the Order, and the Supplier shall be liable for the Company's expense in doing so; or
- (e) On assembled products that subsequently show a defect (cosmetic, material or specification) to reclaim the cost not only for the defective component supplied, but also for the full assembly cost of the product. If part assembled then the full cost of the sub-assembly will be sought.

11.3 Where Goods are repaired or replaced in accordance with clause 11.2 (a), the Supplier warrants those repaired or replaced Goods in accordance with clause 11.1.

11.4 The Supplier shall indemnify, and keep indemnified, the Company in full from and against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of, or in connection with:-

- (a) Breach of any warranty given by the Supplier in relation to the Goods;
- (b) Any claim that the Goods infringe, or their use, resale or importation infringes, the British or foreign patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right of any third party except to the extent that the claim arises from any Specification, drawing, sample or description provided by the Company;
- (c) Any claim made against the Company in respect of any liability, loss, damage, cost or expense sustained by the Company's employees or agents by any customer or third party to the extent that such liability, loss, damage or expense was caused by, relates to, or arises from the Goods;
- (d) Any act or omissions of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods in accordance with the Contract;
- (e) Any defect in packaging or containers of the Goods or any misleading or inaccurate information or data supplied at any time by the Supplier or its servants or agents; or
- (f) Any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Supplier.

11.5 The Supplier shall maintain at its own cost with a reputable United Kingdom insurance company a policy or policies of insurance to cover the Supplier's liability under clause 10.4 to the Company and its employees and agents arising in connection with the performance of the Contract.

11.6 Any materials supplied by the Company to the Supplier in connection with this Order shall be insured for their full replacement value by the Supplier against loss or damage by any cause until such time as they are received back by the Company or otherwise delivered to the Company's Order. The Supplier shall be liable for the full replacement cost of any parts scrapped as a result of the Supplier failing to work in accordance with the Order.

**12. TERMINATION**

12.1 The Company shall be entitled to suspend or cancel the Order in respect of all or any undelivered balance of Goods by giving reasonable notice to the Supplier at any time prior to delivery of the Goods or performance, in which event the Company shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation, but such compensation shall not include loss of anticipated profits or any consequential loss.

12.2 The Company shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:-

- (a) The Supplier commits a breach of any of the terms and conditions of the Contract; or
- (b) Any distress, execution or other legal process is levied upon any of the assets of the Supplier; or

- (c) The Supplier enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution passed for its winding up (except for the purpose of amalgamation or reconstruction), or if a petition is presented to court, or if a receiver or administrator is appointed in respect of the whole, or any part of, the Supplier's undertaking or assets; or
  - (d) The Supplier ceases or threatens to cease to carry on its business; or
  - (e) The financial position of the Supplier deteriorates to such an extent that in the opinion of the Company, the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
  - (f) The Company reasonably apprehends that any of the events above is about to occur in relation to the Supplier; or
  - (g) The Supplier does not pay any money due from it to the Company; or
  - (h) There is any breach of these Terms and Conditions by the Supplier.
- 12.3 The termination of the Contract, however arising, will be without prejudice to the rights and duties of either party accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 12.4 No concession or delay on the part of the Company shall be construed as a waiver of any rights or remedies.

### 13. CONFIDENTIALITY

- 13.1 The Supplier shall keep all work and services carried out hereunder for the Company entirely confidential and not use, publish or make known, without the Company's written approval, any information developed by the Supplier or furnished by the Company to any persons other than personnel of the parties to these terms and conditions. Any public representation regarding the Company shall be made by the Company and any requests for information made to the Supplier by the news media, or others, shall be referred to the Company. Additionally, the Supplier shall not reference the Company nor the work performed for the Company without prior written approval. Information the Supplier considers as proprietary or confidential, and has indicated/marked as proprietary or confidential, will be treated by the Company in the same manner as the Company treats its own proprietary or confidential information.
- 13.2 The Supplier further agrees to place under a confidentiality obligation any sub-contracts and/or consults the Supplier enter into agreements with for the performance of work under these Terms and Conditions. Such confidentiality obligations shall be on terms no less stringent than the Supplier's confidentiality obligations under this clause 13.

### 14. ASSIGNMENT

- 14.1 This Contract is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
- 14.2 The Company may assign the Contract or any part thereof to any person, firm or company.

### 15. FORCE MAJEURE

- 15.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Company if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation:-
- (a) Governmental actions, war, threat of war or national emergency;
  - (b) Acts of terrorism, protests, riots, civil commotion;
  - (c) Act of God, fire, explosion, flood or epidemic;
  - (d) Lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce);
  - (e) Inability to obtain, or delay in obtaining, supplies of adequate or suitable material, fuel, parts, machinery or labour;
  - (f) A power failure or breakdown of machinery.

### 16. COMMUNICATIONS

- 16.1 All communications between the parties regarding the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent by e-mail:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Supplier by the Company; or
  - (b) (in the case of the communications to the Supplier) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Supplier set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Supplier.
- 16.2 All other correspondence in connection with the Order shall state the Order number and item number(s), and shall be marked for the attention of the department or person(s) stipulated in the Order.
- 16.3 Communications to the Supplier shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - (b) if delivered by hand, on the day of delivery; or
  - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
  - (d) if sent by e-mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

### 17. GENERAL

- 17.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

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- 17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 17.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 17.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 17.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 17.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.