



## **Celtic Sea Power Limited**

Terms and conditions of contract for the supply of goods

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## TERMS AND CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS

### BETWEEN:

- (1) **Celtic Sea Power Limited** (Company number 10166467) of Chi Gallos, Hayle Marine Renewables Business Park, North Quay, Hayle, Cornwall. TR27 4DD (the **Customer**); and
- (2) **[SUPPLIER NAME]** of **[ADDRESS]** (the **Supplier**).

### BACKGROUND

The Customer wishes to buy, and the Supplier wishes to supply, the Products (as defined below) on the terms and conditions set out herein.

### AGREED TERMS

#### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (the **Conditions**).

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for non-automated banking business.

**Bribery Laws:** means the Bribery Act 2010 and all applicable laws in connection with bribery or anti-corruption and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010.

**Confidential Information:** has the meaning given in clause 11.

**Control:** in relation to a body corporate, the power of a person (as principal or partner, alone or jointly with any other person or persons) to control at least 50% of the issued voting share capital of the body corporate at the relevant time or to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person

- (a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or
- (b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that or any other body corporate;

and a **Change of Control** occurs if a person with Control of any body corporate ceases to do so or if another person acquires Control of it;

**Delivery:** completion of delivery of an Order in accordance with clause 5.4 or clause 5.8(a).

**Delivery Date:** the date specified for delivery of an Order as set out in Schedule 1.

**Delivery Location:** the location specified for delivery of an Order as set out in Schedule 1.

**Force Majeure Event:** has the meaning given in clause 13.

**Group:** in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries (all as defined in section 1159 of the Companies Act 2006).

**Intellectual Property Rights:** 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, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. **Intellectual Property Right** means any one of the Intellectual Property Rights.

**month:** a calendar month.

**Order:** an order for Products made under this Agreement.

**Order Number:** the reference number indicated in this Agreement on the front sheet.

**Products:** the products set out in each Order made by the Customer to the Supplier and those specified in part 1 of Schedule 1 (if any).

**Product Prices:** the prices of the Products as determined in accordance with clause 8.1 and **Product Price** means the price of an individual Product as determined in accordance with that clause.

**Representatives:** has the meaning given in clause 11.2.

**Specification:** the specification of the Products set out in the relevant Order.

**subsidiary:** has the meaning given in section 1159 of the Companies Act 2006.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

**year:** a calendar year.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Conditions.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions and any reference to these Conditions includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of these Conditions and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of these Conditions.
- 1.9 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.10 Any obligation in these Conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to an agreement is a reference to that agreement as varied or novated (in each case, other than in breach of the provisions of these Conditions) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of these Conditions; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2. SUPPLY OF THE PRODUCTS**

- 2.1 The Supplier shall supply, and the Customer shall purchase, the Products specified in part 1 of Schedule 1 (the **Order**).
- 2.2 These Conditions shall:
- (a) apply to and be incorporated into each Order; and
  - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Supplier's quotation, confirmation of order, or specification, or other document supplied by the Supplier, or implied by law, trade custom, practice or course of dealing.

## **3. ORDERS**

- 3.1 The Customer may amend or cancel the Order, or the Delivery Date for the same, by giving written notice to the Supplier not less than 28 days before the relevant Delivery Date for the Order. Any such cancellation shall be without prejudice to the accrued rights of the parties prior to such cancellation.

## **4. QUALITY**

- 4.1 The Products supplied to the Customer by the Supplier under these Conditions shall:
- (a) conform to the Specification;

- (b) be at least equal in quality and specification to any samples, patterns or specifications in any marketing materials supplied by the Supplier to the Customer in relation to the Products;
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose or standard held out by the Supplier or made known to the Supplier by the Customer;
  - (d) be of sound design, material and workmanship and free from defects in the same, and remain so for six years after Delivery; and
  - (e) comply (including, but not limited to, with regard to matters of design, construction and quality) with all applicable statutory and regulatory requirements and any other relevant instrument having the force of law in force at the time of Delivery of the same.
- 4.2 The Supplier shall obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to manufacture (where applicable) and supply the Products in accordance with the terms of these Conditions.
- 4.3 The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture (where applicable), packing, packaging, marking, storage, handling, and delivery of the Products.
- 4.4 The Supplier shall inspect and test any Products before Delivery to ensure that they will be as warranted under clause 4.1 (the **Testing**). If requested by the Customer in writing, the Supplier shall give the Customer reasonable notice of the time and location of the Testing.

## **5. PACKING AND DELIVERY**

- 5.1 The Supplier shall ensure that the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition.
- 5.2 The Supplier shall deliver the Order to the Delivery Location on the Delivery Date or such other date as may be explicitly agreed between the parties. Time of delivery shall be of the essence. If no time is specified for Delivery, the Supplier shall deliver the relevant Products within a reasonable time of receipt of the relevant Order.
- 5.3 The Supplier shall not deliver the Order more than five Business Days in advance of the Delivery Date without the prior written consent of the Customer.
- 5.4 Delivery of the Order shall be complete on the completion of unloading of that Order at the Delivery Location.
- 5.5 The Supplier shall not deliver the Products by instalments except with the prior written consent of the Customer (which shall be presumed if the relevant Order / Schedules 1 or 2 contains a request for delivery by instalments). Where Products are to be delivered by instalments, they may be invoiced and paid for separately. In such circumstances, references in these Conditions to Orders shall, where applicable and where the context does not otherwise require, be read as references to instalments.

5.6 If the Order is not delivered on the specified Delivery Date or such other date as may be agreed by the parties then, without limiting any other right or remedy the Customer may have, the Customer may:

- (a) refuse to take any subsequent attempted delivery of the Order; and
- (b) terminate the Order in respect of the undelivered Products and in respect of any delivered Products (under that same Order or any instalment thereof) that cannot be commercially and effectively used by the Customer by reason of such non-delivery (as the Customer may in its absolute discretion determine);

provided that the Supplier shall have no liability for any failure or delay in delivering the Order to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under these Conditions.

5.7 Upon termination of the Order pursuant to clause 5.6(b) above, the Customer shall be entitled to:

- (a) return to the Supplier, at the Supplier's sole risk and expense, any Products delivered under the same Order (or any instalment thereof) that cannot be commercially and effectively used by the Customer by reason of the relevant non-delivery (as the Customer may in its absolute discretion determine);
- (b) recover from the Supplier any monies already paid by the Customer in respect of those Products returned pursuant to clause 5.7(a) above; and
- (c) recover from the Supplier any costs and expenses reasonably incurred by the Customer in obtaining substitute products from another supplier and in connection with the non-delivery referred to herein.

5.8 If the Customer fails to accept delivery of the Order on the specified Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under these Conditions:

- (a) the Order shall be deemed to have been delivered at 9.00am on the Delivery Date; and
- (b) the Supplier shall store the Order until delivery takes place and shall safeguard the relevant Products and take all reasonable steps to prevent their deterioration or any damage to them, and shall charge the Customer for all reasonable related costs and expenses (including insurance).

5.9 The Order shall be accompanied by a delivery note from the Supplier showing the Order Number, the date of the Order, the type and quantity of Products included in the Order and, in the case of an Order being delivered by instalments, the outstanding balance of Products remaining to be delivered.

5.10 If the Supplier requires the Customer to return any packaging materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the Order, and any such returns shall be at the Supplier's expense. Where specified by the Customer the Supplier shall collect any packaging materials at no cost to the Customer.

- 5.11 The Supplier shall repair or replace, at no cost to the Customer, any Products that have been damaged or lost in transit, within a reasonable time of becoming aware of the same (whether notified of it by the Customer or otherwise).

**6. ACCEPTANCE AND DEFECTIVE PRODUCTS**

- 6.1 The Customer shall not be deemed to have accepted any Products until it has had 90 days following Delivery to inspect them, or, in the case of a latent defect in the Products until after the latent defect has become apparent and may, within such period and without prejudice to its other rights hereunder, reject any Products which are found not to be in accordance with these Conditions by giving written notice of the same to the Supplier. Such notice shall set out the reasons for such rejection.
- 6.2 If any Products delivered to the Customer do not comply with clause 4.1 or are otherwise not in conformity with these Conditions then, without prejudice to any other right or remedy that the Customer may have, the Customer may reject those Products and:
- (a) return those Products to the Supplier at the Supplier's sole risk and expense (unless the parties have agreed that any necessary replacement or repair shall be carried out at the Customer's premises, in which case the Supplier shall carry out the same in accordance with the Customer's reasonable instructions and at the Supplier's sole expense);
  - (b) require the Supplier to repair or replace the rejected Products at the Supplier's sole risk and expense within seven Business Days of being requested to do so; or
  - (c) require the Supplier to repay the price of the rejected Products (which have not been replaced within a reasonable time with products meeting the requirements of these Conditions) in full; and
  - (d) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Products that are not in conformity with the terms of these Conditions.
- 6.3 The Customer's rights and remedies under this clause 6 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into these Conditions by the Sale of Goods Act 1979.
- 6.4 These Conditions shall apply to any repaired or replacement Products supplied by the Supplier.
- 6.5 If the Supplier fails to promptly repair or replace rejected Products in accordance with clause 6.2(a) or 6.2(b), the Customer may, without affecting its rights under clause 6.2(c) or 6.2(d), obtain substitute products from a third party supplier, or have the rejected Products repaired by a third party, and the Supplier shall reimburse the Customer for the costs it incurs in doing so.



**7. TITLE AND RISK**

- 7.1 Without prejudice to any right of rejection or return that the Customer may have hereunder, and subject to clause 7.2 below, the title and risk in Products delivered to the Customer shall pass to the Customer on Delivery.
- 7.2 If the Supplier postpones Delivery at the request of the Customer, title in the Products shall pass to the Customer seven days after the date of receipt by the Customer of notification from the Supplier that the Products are ready for delivery, or on such other date as may be agreed between the parties in writing, save that in no event shall risk in the Products pass to the Customer until Delivery.

**8. PRODUCT PRICES AND PAYMENT**

- 8.1 The Product Prices shall be those prices set out in the relevant Order for the relevant Products, or those prices that have been agreed between the parties for the relevant Products and that are set out in part 2 of Schedule 1 (if any).
- 8.2 Payment for the Order shall be made by the Customer to the Supplier in full (unless any dispute has arisen in connection with the Products or such payment, or the Customer has exercised any of its rights regarding rejection of Products hereunder) within [30] days of the delivery by the Supplier of a VAT invoice for the same, quoting the relevant Order Number(s), provided that such invoice has been submitted by the Supplier no earlier than the latest of:
- (a) the date of Delivery for the Order; and
  - (b) where the Order is to be delivered in instalments, the date of Delivery of the final instalment; and
  - (c) the date of the Customer's notice of postponement of Delivery in accordance with clause 3.1.
- 8.3 The Product Prices are exclusive of amounts in respect of VAT, which shall be provided for separately on each invoice.
- 8.4 The Product Prices are, unless otherwise stated in the Schedule 1, inclusive of the costs of packaging, insurance and carriage of the Products.
- 8.5 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 8.2. The Supplier's obligations to supply the Products shall not be affected by any payment dispute.

**9. INSURANCE**

- 9.1 During these Conditions and for a period of six years afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:
- (a) public liability insurance for not less than £5 million per claim with no limit on the number of such claims; and

- (b) product liability insurance for not less than £1 million in aggregate for all claims arising in an year; and
  - (c) a comprehensive policy of insurance to cover the liability of the Supplier in respect of any act or omission for which it may become liable to indemnify the Customer for arising out of or in connection with these Conditions.
- 9.2 On taking out and on renewing each policy, the Supplier shall promptly send a copy of the receipt for the premium to the Customer. On the Customer's written request, the Supplier shall provide the Customer with copies of the insurance policy certificates and details of the cover provided.
- 9.3 The Supplier shall ensure that any of its subcontractors also maintain adequate insurance having regard to the obligations under these Conditions which they are contracted to fulfil.
- 9.4 The Supplier shall:
  - (a) do nothing to invalidate any insurance policy or to prejudice the Customer's entitlement under it; and
  - (b) notify the Customer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 9.5 The Supplier's liabilities under these Conditions shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 9.1.
- 9.6 If the Supplier fails or is unable to maintain insurance in accordance with clause 9.1, or fails to provide evidence that it has paid the current year's premiums in accordance with clause 9.2, the Customer may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.

## **10. INDEMNITY**

- 10.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
  - (a) any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Products (save where such claim arises out of an actual or alleged infringement which arises due to the Supplier having followed a design furnished by the Customer to it or due to the Customer using the relevant Products in a manner or for a purpose not reasonably to be inferred from the specification of those Products);
  - (b) 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, defective Products or the negligence of the Supplier, its employees, agents or subcontractors during such time as they were on, entering onto or departing from the Customer's premises for any reason hereunder, in

either case only to the extent attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

- (c) any damage to the Customer's premises and physical or other personal injury to the Customer's personnel or to members of the public which is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

- 10.2 The Supplier shall not be liable to indemnify the Customer for any loss, damage, cost or injury to the extent that the same arises directly and solely out of or in connection with any act or omission of the Customer, its employees, agents or subcontractors.

## **11. CONFIDENTIALITY**

- 11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any member of its Group, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by clause 11.2.

- 11.2 Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, agents, consultants or subcontractors (**Representatives**) who need to know such information for the purposes of carrying out the party's obligations under these Conditions, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 12 as though they were a party to these Conditions. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

- 11.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Conditions are granted to the other party or to be implied from these Conditions. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

## **12. TERMINATION**

- 12.1 The Customer shall be entitled to terminate these Conditions and/or any Order subject to the same with immediate effect, and without any obligation to pay any compensation to the Supplier, by giving notice in writing to the Supplier if:

- (a) there is a Change of Control of the Supplier; or
- (b) 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

- (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Supplier; or
- (e) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier; or
- (g) a floating charge holder over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver; or
- (h) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier; or
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 12.1(a) to clause 12.1(e) (inclusive);
- (j) the Supplier ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- (k) the Supplier commits a material breach of the Contract and such breach is not remediable.

12.2 Without affecting any other right or remedy available to it, the Customer may terminate this Agreement on giving not less than 1 months' written notice to the Supplier, upon which the Supplier shall immediately cease work and be entitled to any amount properly due for payment under this Agreement for work properly carried out at the date of termination.

12.3 Either party may terminate these conditions and/or any Order by written notice to the other party where any Force Majeure Event prevents the other party from performing its obligations under these Conditions for any continuous period of three months.

12.4 The Customer may terminate these conditions and/or any Order with immediate effect, and without any obligation to pay any compensation to the Supplier upon written notice if the Supplier is in material breach of any of its obligations hereunder and, if capable of remedy, has not remedied such breach within 7 days of notice from the Customer identifying such breach and requesting it be remedied.

12.5 Termination of these Conditions shall not prejudice any of the parties' rights and remedies which have accrued as at termination.

**13. FORCE MAJEURE**

13.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under these Conditions so long as, and to the extent to which, the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.

13.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event (and in any event within 7 days from the date of such Force Majeure Event):

- (a) notify the other party of the nature and extent of such Force Majeure Event; and
- (b) use all reasonable endeavours to remove any such causes and resume performance under these Conditions as soon as feasible.

13.3 A **Force Majeure Event** means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources but shall not include any labour dispute (including but not limited to strikes, industrial action or lockouts) affecting the Supplier's employees and/or the employees of its subcontractors..

**14. COSTS**

Save as otherwise provided in these Conditions, each party shall pay its own costs in connection with the negotiation, preparation, execution and performance of these Conditions and each Order, and all documents ancillary to it.

**15. FURTHER ASSURANCE**

Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to these Conditions and the transactions contemplated by it.

**16. VARIATION**

No variation of this Contract shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

**17. WAIVER**

17.1 A waiver of any right under this Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under this Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

- 17.2 Unless specifically provided otherwise, rights arising under this Contract are cumulative and do not exclude rights provided by law.

**18. SEVERANCE**

- 18.1 If any provision of these Conditions (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**19. RIGHTS OF THIRD PARTIES**

A person who is not a party to this Contract shall not have any rights under or in connection with it.

**20. ASSIGNMENT AND SUBCONTRACTING**

- 20.1 The Supplier may not assign or transfer or subcontract any of its rights, benefits or obligations under these Conditions without the prior written consent of the Customer.
- 20.2 Any assignment, transfer or subcontracting by the Supplier hereunder shall not relieve the Supplier of any of its obligations hereunder and it shall remain fully liable for breach of them by its employees, agents, assigns, transferees and subcontractors.

**21. ENTIRE AGREEMENT**

- 21.1 Subject to clause 21.3 below, these Conditions constitute the whole agreement and understanding of the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of these Conditions or any Order.
- 21.2 Each party acknowledges that, in entering into these Conditions and any Order, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out or referred to in these Conditions.
- 21.3 The additional terms and conditions set out in Schedule 2 (if any) (the **Additional Terms**) form part of these Conditions. In the event of any inconsistency between the Additional Terms and these Conditions, these Conditions [the Additional Terms] shall prevail.
- 21.4 These Conditions shall prevail over any inconsistent terms or conditions contained, or referred to, in the Supplier's quotation, confirmation of order, specification, or any other document supplied by the Supplier, or implied or law, trade custom, practice or course of dealing and by supplying the Products the Supplier confirms its acceptance of these Conditions.

## **22. NOTICES**

- 22.1 Any notice required to be given under these Conditions or any Order shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in Schedule 1, or as otherwise specified by the relevant party by notice in writing to the other party.
- 22.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the address and for the person referred to in 22.1 above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 22.3 This clause 22 shall not apply to the service of any proceedings or other documents in any legal action.

## **23. GOVERNING LAW AND JURISDICTION**

- 23.1 These Conditions, each Order and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 23.2 The parties irrevocably agree that, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions, any Order, or their subject matter or formation (including non-contractual disputes or claims)

## **24. LIMITATION OF LIABILITY**

- 24.1 Subject to clause 24.5, the Customer's total liability shall not exceed the overall sum of the Product Prices for items properly completed and provided under this Agreement.
- 24.2 Subject to clause 24.5, the Customer shall not be liable for consequential, indirect or special losses.
- 24.3 Subject to clause 24.5, the Customer shall not be liable for any of the following (whether direct or indirect):
- (a) loss of profit;
  - (b) loss of revenue;
  - (c) loss of use of data;
  - (d) loss of use;
  - (e) loss of production;
  - (f) loss of contract;
  - (g) loss of commercial opportunity;
  - (h) loss of savings, discount or rebate (whether actual or anticipated);
  - (i) harm to reputation or loss of goodwill; and/or
  - (j) loss of business.

- 24.4 Without limiting the Customer's entitlement to recover other types of loss, the parties agree that the Customer may recover the following from the Supplier as direct loss:
- (a) the cost of selecting, procuring, installing and testing replacement goods;
  - (b) wasted expenditure or unnecessary charges incurred by the Customer (including regulatory fines);
  - (c) liability to third parties (including customers); or
  - (d) the cost of rectifying lost or damaged data.
- 24.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) any other losses which cannot be excluded or limited by Applicable Law;
  - (d) any losses caused by wilful misconduct.

## **25. ANTI-BRIBERY**

25.1 For the purposes of this clause 25 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

25.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and [ use all reasonable endeavours to] ensure that:

- (a) all of that party's personnel;
- (b) all others associated with that party; and
- (c) all of that party's subcontractors

involved in performing the Contract so comply.

25.3 Without limitation to clause 25.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere and shall implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.

25.4 The Supplier shall immediately notify the Customer as soon as it becomes aware of a breach or possible breach by the Supplier of any of the requirements in this clause 25.

25.5 Any breach of this clause 25 by the Supplier shall be deemed a material breach of the Contract that is not remediable and shall entitle the Customer to immediately terminate the Contract by notice under clause 12.1.

## **26. ANTI-SLAVERY**

26.1 The Supplier undertakes, warrants and represents that:

- (a) neither the Supplier nor any of its officers, employees, agents or subcontractors:



- (i) has committed an offence under the Modern Slavery Act 2015 (a **MSA Offence**);
- (ii) has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- (b) it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;
- (c) its responses to the Customer's modern slavery and human trafficking due diligence questionnaire are complete and accurate;
- (d) it has implemented due diligence procedures to ensure compliance with the Modern Slavery Act 2015 in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the Customer on request at any time throughout the Contract; and
- (e) it shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of Supplier's obligations under clause 26.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.

26.2 Any breach of clause 26.1 by the Supplier shall be deemed a material breach of the Contract and shall entitle the Customer to terminate this Agreement with immediate effect under clause 12.1.

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Agreed by:

Signed by [NAME OF DIRECTOR] .....  
 for and on behalf of CELTIC SEA POWER LIMITED Director

Signed by [NAME OF DIRECTOR] .....  
 for and on behalf of [NAME OF SUPPLIER] Director

## **SCHEDULE 1**

### **Part 1**

#### **The Products**

[insert]

### **Part 2**

#### **Product Prices**

[insert]

### **[Part 3**

#### **Time and location of Delivery**

[insert]

#### **Key person and contact details for the Customer**

[insert]

***[NB: for use where these Conditions are intended to cover a single delivery of Products and not orders from time to time.]***

## SCHEDULE 2

### ADDITIONAL TERMS AND CONDITIONS

Additional Terms:

[ none ]