

## 1. Definitions and Interpretation

- 1.1. In the Conditions the following definitions apply:
    - 1.1.1. "Business Day" means any day which is not a Saturday, Sunday or a Public Holiday;
    - 1.1.2. "Conditions" means these Terms and Conditions of Sale as attached to our Proposal;
    - 1.1.3. "Confidential Information" means all information relating to the Supplier's business and affairs which the Customer directly or indirectly receives or acquires from the Supplier or any representative of the Supplier either in writing, by electronic mail or verbally;
    - 1.1.4. "Contract" means the Contract between the Supplier and the Customer for the supply of Goods and/or Services incorporating the Suppliers Proposal, Conditions of Sale and the Purchase Order Acknowledgement;
    - 1.1.5. "Commissioning" means installation of the Goods and the demonstration by the Supplier that the Goods are in good working order and in accordance with the Goods Specification;
    - 1.1.6. "Customer" means the person or firm who purchases the Goods and/or Services from the Supplier;
    - 1.1.7. "Goods" means the goods (or any part of them) set out in the Sales Order;
    - 1.1.8. "Goods Specification" means any specification for the Goods provided in writing by the Supplier to the Customer;
    - 1.1.9. "Insolvency Event" means the Customer:
      - 1.1.9.1. enters into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangements as a solvent company for the purposes of amalgamation or reconstruction); or
      - 1.1.9.2. without a declaration of solvency, it passes a resolution or makes a declaration that it be wound up; or
      - 1.1.9.3. has a winding up order or bankruptcy order made against it; or
      - 1.1.9.4. has appointed to it an administrator or administrative receiver; or
      - 1.1.9.5. (additionally, in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in 1.1 to 1.4.
    - 1.1.10. "Manufacturer's Warranty" means any warranty given by the manufacturer of the Goods of which the Customer has the benefit;
    - 1.1.11. "Price" means the price of the Goods and/or Services excluding VAT as set out in the Sales Order or as otherwise agreed in writing by the Supplier;
    - 1.1.12. "Proposal" means the offer made by the Supplier to deliver the Services required;
    - 1.1.13. "Public Holiday" means Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday;
    - 1.1.14. "Services" means the services supplied by the Supplier to the Customer as set out in the Suppliers proposal;
    - 1.1.15. "Specifications" means the Customers Specification as modified by the Suppliers Proposal;
    - 1.1.16. "Stage Payment" means the schedule of Stage Payments set out in the Sales Order;
    - 1.1.17. "Supplier" means Rural Energy Limited;
    - 1.1.18. "Warranty" means any warranty concerning the Goods and/or Services given by the Supplier in the Conditions or otherwise in writing, and "Warranty Period" means the period (if any) of such warranty.
  - 1.2. Headings, references to persons, legislation etc.
    - 1.2.1. In the Contract and these Conditions, unless the context otherwise requires:
      - 1.2.1.1. the headings are included for convenience only and shall not affect the interpretation of the contract;
      - 1.2.1.2. the singular includes the plural and vice versa;
      - 1.2.1.3. a gender includes any gender;
      - 1.2.1.4. a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate; and
      - 1.2.1.5. a reference to a statute, statutory instrument or other subordinate legislation ("legislation") is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification.
  - 1.3. Reckoning period of Days
    - 1.3.1. Where under the Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.
- ## 2. Basis of Contract
- 2.1. The Contract shall not come into force until the Customer has either sent the Supplier a purchase order that has been accepted by the Supplier, or the Supplier has signed the Suppliers Order Acknowledgement as attached to the Suppliers Proposal. The signature of either document constitutes agreement by the Customer to purchase Goods and/or Services in accordance with the Conditions on which date the Contract shall come into existence (the "Commencement Date").
  - 2.2. The price stated in Sales Order is valid for 30 days from the date of issue of the Sales Order. The Supplier reserves the right to reject any Sales Order signed later than 30 days from its date of issue.
  - 2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
  - 2.4. Any samples, drawings, technical details and descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force unless specific reference is made to them in the Sales Order.
  - 2.5. The Supplier shall not be liable for any typographical, clerical or other error or omission in any sales literature, quotation, price list, Sales Order, invoice or the document or information issued by the Supplier, which shall be corrected and the Supplier shall take all reasonable steps to bring any such correction to the Customer's attention.
  - 2.6. The Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
  - 2.7. Quotations given by the Supplier shall not constitute an offer until acceptance of the order has been given in accordance with clause 2.1.
  - 2.8. All of the Conditions shall apply to both Goods and Services except where application to one or the other is specified.
- ## 3. Price and Cancellation
- 3.1. Cancellation of the Contract following Acceptance shall incur the Customer in charges as follows:
    - 3.1.1. Post Order Acceptance and prior to Supplier ordering the boiler from Herz – 25% of contract price;
    - 3.1.2. Post order of boiler and up to six weeks thereafter – 50% of contract price;
    - 3.1.3. Thereafter up to 4 weeks before scheduled delivery 75% of contract Price.
  - 3.2. Subject to clauses 3.3 and 3.4 the Customer shall pay the Supplier the Price together with the amount of value added tax ("VAT") chargeable from time to time.
  - 3.3. It may be only possible to gauge accurate specifications for the Goods upon their installation and, if it is apparent at that time that the Supplier must carry out further work to adapt the Goods to the environment in which they are installed, the Supplier shall inform the Customer and the parties shall make an equitable adjustment in the Price.
  - 3.4. The Supplier reserves the right to increase the Price in the event of labour, material, tax or currency changes between the date of the Sales Order and the performance of the Contract.
- ## 4. Goods

- 4.1. The Goods are described in the Quotation
  - 4.2. The Supplier reserves the right to make technical and design changes at any time
- ## 5. Delivery of Goods
- 5.1. The Supplier shall deliver the Goods to the location set out in the Sales Order or such other location as the parties may agree in writing (the "Delivery Location").
  - 5.2. Unless otherwise agreed in writing, delivery of the Goods shall be completed on the Good's arrival at the Delivery Location.
  - 5.3. The Customer shall inspect deliveries immediately. If the Goods do not comply with the Sales Order or the delivery note or if visible defects are identified, the Customer shall notify the Supplier in writing within 3 Business Days of delivery.
  - 5.4. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
  - 5.5. Subject to clause 5.4, if the parties have agreed in writing that a delivery date is materially important to the Customer and the Supplier fails to deliver the Goods by the agreed date, then the Supplier shall be liable for any loss or damage resulting from the failure to meet the delivery date provided always, and notwithstanding anything to the contrary contained in the Contract, the Suppliers total aggregate liability for delay shall not exceed 10% of the Price. Unless stated otherwise in the Suppliers Proposal, delay damages shall accrue at the rate of 0.5% of the contract value per week delay up to 10% of the contract value.
  - 5.6. If the Customer fails to accept or take delivery of the Goods within 2 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
    - 5.6.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
    - 5.6.2. the Supplier shall store the Goods until actual delivery takes place, and the Customer shall pay all of the Supplier's costs and expenses of doing so (including insurance); and
    - 5.6.3. the Customer shall pay the agreed Stage Payment as though delivery has been made on the agreed date.
- ## 6. Assembly, Operation and Commissioning
- 6.1. The assembly of the Goods shall be carried out in accordance with the Supplier's guidelines. This may be carried out by trained third parties or by the Supplier as agreed with the Customer.
  - 6.2. The Commissioning of the Goods shall be carried out by the Supplier or other approved by Supplier.
  - 6.3. The Operation of the Goods must be carried out in accordance with the Supplier's guidelines to ensure any Warranty is valid.
- ## 7. Title and Risk
- 7.1. The risk in the Goods shall pass to the Customer on completion of delivery.
  - 7.2. Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
    - 7.2.1. the Goods; and
    - 7.2.2. any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
  - 7.3. Until title to the Goods has passed to the Customer, the Customer shall:
    - 7.3.1. hold the Goods on a fiduciary basis as the Supplier's bailee;
    - 7.3.2. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
    - 7.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
    - 7.3.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery; and
    - 7.3.5. notify the Supplier immediately if it becomes subject to any Insolvency Event.
  - 7.4. If before title to the Goods passes to the Customer the Customer becomes subject to any Insolvency Event, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, may enter any premises of the Customer or of any third party where the Goods are or may be stored in order to recover them.
- ## 8. Supply of Services
- 8.1. The Supplier shall provide the Services to the Customer in accordance with the specification in the Quotation in all material respects.
  - 8.2. The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Sales Order or Quotation, but any such dates shall be estimates only for the performance of the Services.
  - 8.3. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety or regulatory requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event. This shall not apply to changes in applicable law or safety or regulatory requirement that comes into force after the Commencement Date.
  - 8.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- ## 9. Customer's obligations
- 9.1. The Customer shall:
    - 9.1.1. ensure that the terms of the Sales Order are complete and accurate;
    - 9.1.2. co-operate with the Supplier in all matters relating to the Contract;
    - 9.1.3. provide the Supplier with such information as the Supplier may require to perform the Contract, and ensure that such information is accurate in all material respects; and
    - 9.1.4. perform any other obligations of the Customer set out in the Conditions, the Sales Order and/or the Quotation.
  - 9.2. If the Supplier's performance of any of its obligations in respect of the Contract is prevented or delayed by any act or omission of the Customer or failure of the Customer to perform any relevant obligation (a "Customer Default"):
    - 9.2.1. the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Contract or any part of the Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
    - 9.2.2. the Customer shall grant the Supplier a reasonable extension of time for completion of the Contract covering the period of suspension plus time for re-mobilisation; and
    - 9.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from any Customer Default.
- ## 10. Payment
- 10.1. Unless otherwise stated in the Conditions or the Sales Order, the Customer shall pay each invoice submitted by the Supplier:
    - 10.1.1. within 30 calendar days of the date of the invoice (the "Due Date for Payment"); and
    - 10.1.2. in full and in cleared funds to a bank account nominated in writing by the Supplier.

- 10.2. Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under this Contract by the Due Date for Payment the Supplier shall have the right to:
- 10.2.1. charge interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and
  - 10.2.2. treat the failure to make payment as a Customer Default and the provisions of clause 9.2 shall apply (mutatis mutandis).
- 10.3. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. Without limiting the generality of the foregoing, the Customer shall not withhold payment if insignificant components are missing but usage of the Goods is not rendered impossible as a result or if rectification work has been carried out on delivery.
11. Warranty
- 11.1. Other than Clause 11.2, the Goods shall be warranted for a period of twelve months from delivery to site unless stated otherwise in the Quotation.
  - 11.2. The heat exchanger and fire tubes contained within the boiler shall be warranted for a period of five years from delivery to site unless stated otherwise in the Quotation.
  - 11.3. Subject to clauses 11.5, 11.6, 11.7 and 11.8, during the Warranty Period the Supplier will (at its option) repair, replace or reinstall or credit a sum to be agreed with the Customer (in lieu of the repair, replacement or reinstallation) any of the Goods or parts thereof which can be shown to be defective due to some inadequacy or neglect in workmanship or materials.
  - 11.4. The Supplier's liability for any breach of the Warranty is subject to:
    - 11.4.1. the Customer having paid in full for the Goods;
    - 11.4.2. the Customer giving notice in writing to the Supplier during the Warranty Period within 14 days of discovery that some or all of the Goods do not comply with the Warranty;
    - 11.4.3. the Customer giving the Supplier a reasonable opportunity of examining the Goods;
    - 11.4.4. except where the Supplier commissioned the Goods, the Customer shall be responsible (at its own cost) for dismantling and returning to the Supplier's place of business (or any other location as directed by the Supplier) and refitting any Goods or parts repaired or replaced under the Warranty;
    - 11.4.5. any restriction on such liability set out in the Sales Order or Quotation; and
    - 11.4.6. clause 11.5.
  - 11.5. The Supplier shall not be liable for the Goods failure to comply with the Warranty if:
    - 11.5.1. the Customer makes any further use of such Goods after giving notice in accordance with clause 11.4;
    - 11.5.2. the defect arises because the Customer failed to follow the manufacturer's or the Supplier's instructions as to the storage, installation, commissioning, use or maintenance of the Goods;
    - 11.5.3. the Customer alters or repairs the Goods without the written consent of the Supplier;
    - 11.5.4. the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions.
  - 11.6. Unless otherwise notified in writing to the Customer, the terms of any Warranty shall apply to any repaired or replacement Goods supplied by the Supplier, provided that such Warranty shall only apply for the remainder of the Warranty Period for the original Goods (if any).
  - 11.7. Notwithstanding any other terms of the Conditions limiting or excluding liability of the Supplier under the Warranty, the Supplier's liability under the Warranty shall be subject to the exclusions, limitations and restrictions of liability under, and the conditions of, the Manufacturer's Warranty.
  - 11.8. The Warranty shall not apply to any wearing or consumable parts, or Goods not forming part of the usual range of goods of the Supplier ("Third Party Goods"). The Supplier shall use reasonable endeavours to pass on to the Customer the benefit of any manufacturer's or supplier's warranty covering the Third Party Goods and the Customer hereby accepts such manufacturer's or supplier's warranty in full satisfaction of all claims in relation to Third Party Goods.
  - 11.9. In the event of any dispute arising between the parties as to whether a defect is covered by the Warranty, the parties hereby agree to refer the dispute to an industry expert accepted by both Parties whose decision shall be final and binding on the parties and whose fees shall be shared equally between the parties.
12. Intellectual Property Rights
- 12.1. All Intellectual Property Rights in or arising out of or in connection with the Contract shall be owned by the Supplier.
  - 12.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods or Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will allow the Supplier to licence such rights to the Customer.
13. Limitation of Liability
- 13.1. Nothing in the Contract shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors.
  - 13.2. In addition to other terms of the Conditions or the Sales Order, but subject to clause 13.1:
    - 13.2.1. the Supplier shall under no circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss including but not limited to loss of profit, income, revenue, production or plant availability, loss of use or availability of any premises or for any third party losses (including damage to third party property), anticipated savings, opportunity data, or goodwill, arising under or in connection with the Contract;
    - 13.2.2. except as expressly provided for in the Conditions, the Supplier shall have no liability to the Customer in respect of the breach of any Warranty;
    - 13.2.3. the Supplier's total liability to the Customer for negligence shall not exceed £5 million; and
    - 13.2.4. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort, breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the monies received by the Supplier under the Contract.
  - 13.3. Except as set out in the Conditions or the Sales Order, all warranties, conditions and other terms implied by statute or common law (including implied warranties of satisfactory quality and of suitability or fitness for a particular purpose) are, to the fullest extent permitted by law, excluded from the Contract.
14. Termination (This clause 14 shall survive termination of Contract)
- 14.1. If the Customer:
    - 14.1.1. does not pay by the Due Date the amount properly due to the Supplier in respect of any invoice and/or any VAT properly payable on that amount; or
    - 14.1.2. fails to comply with clause 15.5; the Supplier may give to the Customer a notice specifying the default or defaults (a "specified default or defaults")
  - 14.2. If a specified default continues for 7 days from receipt of notice under clause 14.1 the Supplier may at any time by further notice to the Customer terminate the Contract.
  - 14.3. If the Customer becomes subject to an Insolvency Event, the Supplier may by notice to the Customer terminate the Contract.
  - 14.4. On termination of the Contract:
    - 14.4.1. other than arising from an Insolvency Event, the Customer shall immediately pay to the Supplier all of the Supplier's outstanding invoices and interest and, in respect of Goods or Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice which shall be payable by the Customer immediately on receipt;
- 14.4.2. the Customer shall return all of the Supplier's Goods, materials, the plant or equipment which have not been fully paid for, and if the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them, and until they have been returned the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected to the Contract;
  - 14.4.3. the Customer will be liable for all the loss and/or expense suffered or incurred by the Supplier as a result of the termination, including (without limitation) any diminution in the value of any Goods returned to the Supplier, and loss of profit;
  - 14.4.4. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
  - 14.4.5. clauses which expressly or by implication have effect after termination shall continue in full force and effect.
15. General
- 15.1. Force Majeure. For the purposes of this Contract "Force Majeure Event" means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or another party), failure of a utility service or transport network, act of God, war, riot, civil commotion, terrorism, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or the default of suppliers or subcontractors.
  - 15.2. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
  - 15.3. If a Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 13 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.
  - 15.4. Assignment and subcontracting. The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
  - 15.5. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its obligations under the Contract.
  - 15.6. Notices. Any notice or communication required to be given to a party under or in connection with this Contract shall be in writing and may be given or served by any effective means to the recipient at the address specified in the Sales Order or such other address as it may notify to the other party. If no such address is current, the notice or other communication shall be treated as effectively given or served if addressed and sent by pre-paid post to the recipient's last known principal business address or (where a body corporate) its registered office.
  - 15.7. Waiver and cumulative rights. A waiver by the Supplier of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by the Supplier in exercising any right or remedy under the 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.
  - 15.8. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
  - 15.9. Agency. Nothing in the Contract is intended to, or shall be deemed to constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have the authority to act as agent for, or to bind, the other party in any way.
  - 15.10. Confidentiality. The Customer shall not disclose Confidential Information unless:
    - 15.10.1. disclosure is necessary for the proper performance of the Contract;
    - 15.10.2. it is in the public domain other than due to wrongful use or disclosure; or
    - 15.10.3. disclosure is required by law or because of disputes arising out of or in connection with the Contract.
  - 15.11. Severance. If a court or any other competent authority finds that any provision of the Contract (or any part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
  - 15.12. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
  - 15.13. Contracts (Rights of Third Parties) Act 1999. Notwithstanding any other provision of the Contract, nothing in the Contract confers or is intended to confer any right to enforce any of its terms on any party who is not a party to it.
  - 15.14. Variation. Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.
  - 15.15. Extension of Time. As soon as reasonably possible after the occurrence of a delay event the Supplier shall establish and detail the likely consequences thereof and shall serve notice on the Customer of what it considers would be a fair and reasonable extension of the Date for Completion in the circumstances.
  - 15.16. Applicable law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales (subject to right of either party to enforce a judgement obtained in the courts of England and Wales in any other jurisdiction).

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