

TERMS OF BUSINESS FOR THE PURCHASE OF GOODS AND SERVICES

Definitions and Interpretations

1.1 In these terms of business (Terms of Business), the following definitions shall apply:

"Associate"	means the ultimate holding company, and any subsidiary of that holding company
"Purchaser"	means any of the following Cobalt group of companies; Cobalt Energy Ltd, Cobalt Energy Project Services Limited, North Midlands Operations Ltd, Welland Operations Limited and Tyseley Operations Limited
"Contract Price"	means the price for the Goods and/or Services as stated on the purchase order and unless otherwise stated shall include all design, materials, labour, tooling, plant, packaging, carriage and delivery costs to the Purchasers (or an Associate's) nominated address as set out in the purchase order and shall also include any duties, taxes or levies other than Value Added Tax (VAT) (which shall be payable on receipt of a valid VAT invoice);
"Goods"	means all those products or materials which are subject of the Order and which are to be supplied to the Purchaser by the Seller under these Terms of Business.
"Insolvent"	means a party goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation) or has an administration order made against it or carries on its business or any part of it under an administrator or receiver or manager for the benefit of its creditors or any one of them or is subject of any arrangement, event or proceedings analogous to any of the above;
"IPR"	means without limitation any patent, copyright, registered or unregistered design right, or trademark, technical know-how, calculations, drawings, designs computer programs or otherwise resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
"Order"	means the purchase order placed by the Purchaser for the supply of Goods and/or Services.

"Seller"	means the entity named on the purchase order as being the supplier of the Goods and/or Services.
"Services"	means all those services which are the subject of the Order or which are reasonably considered necessary for the supply of the Goods by the Seller under the terms of an Order, in each case under these Terms of Business including (but not limited to) the installation of the Goods;
"Site"	means the site where the plant or project is located.

- 1.2** Unless the context otherwise requires, each reference in this Contract to:
- 1.2.1 "writing" and any cognate expression, includes a reference to any communication effected by electronic transmission or similar means but excludes fax;
- 1.2.2** legislation or a provision of legislation is a reference to that legislation or provision as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that legislation or legislative provisions;
- 1.2.3** Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.4** "this Contract" is a reference to this Contract; and
- 1.2.5** a Clause is a reference to a Clause of this Contract; and
- 1.2.6** a "Party" or the "Parties" refer to the parties to this Contract.
- 1.3** The headings used in these Terms of Business are for convenience only and shall have no effect upon the interpretation of these Terms of Business.
- 1.4** Words imparting the singular shall include the plural and vice versa.
- 1.5** References to any gender shall include the other gender.

Formation of Contract

- 2.** The Seller shall supply and the Purchaser shall purchase the Goods and/or Services in accordance with the Order, the Purchaser's specification and the Seller's quotation which are subject to these Terms of Business, all of which shall form the contract (the Contract). The Contract shall be to the exclusion of any other terms and conditions. In the event of any conflict between the documents as noted above, the order of precedence shall be the Order, the Purchaser's Specification, these Terms of Business, and the Seller's quotation (the latest version of the Seller's quotation).
- 3.** The Purchaser will be bound by an Order upon the Seller's acceptance of it in writing or by undertaking an act of part performance specifically referring to the Order.

4. Quality and Description

The Seller warrants that any Goods and/or Services shall:

- 4.1 conform as to quantity and description with the technical specification as stated in the Order.
- 4.2 correspond to drawings and the technical specification provided by the Purchaser prior to it making the Order.
- 4.3 be of sound new material and of sound workmanship.
- 4.4 in relation to Goods supplied, shall be fit for purpose, including but not limited to any technical specification or any quotation given by the Seller prior to the Order.
- 4.5 in relation to services rendered, shall be carried out with all reasonable skill, care and diligence.
- 4.6 be free of any lien, charge or other encumbrance; and
- 4.7 comply with all legislation, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Goods and/or Services.

Sellers Services and Obligations

- 5. The Seller shall use all reasonable endeavours to ensure that the Services are provided in accordance with the Contract in all material respects.
- 6. The Seller warrants that it shall exercise all reasonable skill, care and diligence in the performance of the Services to the level expected of a competent professional services provider experienced in the provision of the Services on projects of a similar nature, size and complexity.
- 7. The Seller acknowledges that the Purchaser shall be deemed to have relied upon the Seller's professional skill and judgment in respect of the performance of the Services and that accordingly the Seller owes to the Purchaser a professional duty of care.
- 8. The Seller shall use all reasonable endeavours to ensure that deadlines agreed between the Purchaser and the Seller are met, and time shall be of the essence of the Contract.
- 9. The Seller shall, at all times, observe all planning conditions and conditions of any consents affecting the Site to the extent such conditions have been made known to the Seller by the Purchaser.
- 10. Without prejudice to Clause 4, the Seller further warrants that, in the supplying of the Goods and/or Services, it shall not specify for use or use any material which is generally known in the building profession to be deleterious to health and safety, the performance or deliverability of buildings or structures or damaging to the environment in the particular circumstances in which they are specified for use or used and all materials used or specified for use shall conform to British or European Standards or codes of practice.
- 11. The Seller shall be given opportunities to examine and shall be deemed to have fully examined all technical drawings and specifications for the Goods and/or Services and no claim whatsoever by the Seller on the grounds of insufficient knowledge or misunderstanding in any respect shall be considered by the Purchaser.
- 12. The Seller undertakes to the Purchaser that all information supplied to the Purchaser in connection with the purchase of the Goods and/or Services and particularly with regard to the safety and compliance with applicable laws is complete and accurate in all respects and that no significant change will be made to the matters which have been the subject of the Purchaser's enquires.

13. The Seller shall, at any time prior to the completion of the Goods and/or Services, allow the Purchaser and its representatives to inspect the Goods offsite upon reasonable written notice and during normal working hours and to inspect the carrying out of the Goods and/or Services.
14. The Seller shall, in the performance of the Services, use its best endeavors to avoid causing any public or private nuisance to any neighboring land owner or to any adjoining landowner or tenant of any adjoining land and shall be liable to the Purchaser for any claim, loss or expense arising out of any nuisance caused by the Seller in the performance of the Services.

Insurance

15. The Seller warrants that it shall, at its sole cost and expense, procure and maintain in full force and effect such insurance as is reasonable and customary in the Seller's industry, including but not limited to employers liability to the value of not less than £5 million per claim, public liability insurance to the value of not less than £5 million per claim, product liability insurance to the value of not less than £5million per claim and professional indemnity insurance to the value of not less than £5 million per claim.
16. The Seller shall maintain such product liability insurance and professional indemnity insurance for a period of 6 years from the date of completion of the Services, provided that such insurance remains available to members of the Seller's profession at commercially reasonable rates and terms. Where such insurance ceases to be available at commercially reasonable rates and terms, the Seller shall notify the
17. Purchaser, and the Parties will meet to discuss the best way in which to protect their respective interests. The Seller shall, as and when requested to do so by the Purchaser, provide documentary evidence that such insurances pursuant to Clauses 15 and 16 are being maintained.

Warranty

18. If within 12 months of the date when the Goods are first put to use, the Purchaser notifies the Seller of a defect (being a fault in workmanship, material or design or any discrepancy whatsoever from the Purchaser's technical specification, or the Seller' quotation or the Order and Contract) the Seller warrants that it shall replace or repair such defective Goods at the Seller's expense (including packaging and carriage). Any Goods repaired or any replacement Goods shall be subject to a like warranty.
19. If there are any errors in the Services or deliverables, as notified to the Seller by the Purchaser, that do not comply with the Contract, the Seller shall rectify such errors within a reasonable time, to be agreed between the parties, at the Sellers sole cost and expense.

Anti-Bribery and Anti-Corruption

20. The Seller shall comply with the ethical standard and all anti-corruption laws applicable in the United Kingdom and shall ensure that all of its employees, sub- contractors, workers and any affiliates, person or entity acting for or on its behalf shall similarly comply with the highest ethical standards and such anti-corruption laws.
21. The Seller shall, and shall procure that each of its employees, workers, sub- contractors and any affiliates:
 - a. not do or omit to do anything that may cause the Purchaser to be in breach of any law applicable to the Purchaser relating to anti-bribery and anti-corruption; and

- b. promptly report to the Purchaser any request or demand for any undue financial or other advantage received in connection with the Contract or the provision of the Services.
- 22. The Seller shall maintain appropriate business standards, procedures and controls necessary to comply with Clauses 20 and 21 and the Purchaser shall have the right to review such procedures and controls.
- 23. The Seller shall indemnify and keep the Purchaser indemnified against any loss, damages or costs incurred by the Purchaser in the event the Seller breaches any of its obligations in respect of Clauses 20-22.
- 24. Any breach by the Seller of its obligations under Clauses 20-22 shall constitute a material breach of this Contract.
- 25. Breach of the above-mentioned provision shall entitle the Purchaser to terminate this Contract (and any and all other agreements as the case may be) with immediate effect, without prejudice to any other rights that the Purchaser may have.

Quality Assurance

- 26. The Seller warrants he shall have and maintain a quality assurance system (or plan) that complies with an approved and certified quality assurance system such as ISO 9001.

Delivery

- 27. Time of delivery of the Goods and/or Services shall be of the essence of the Contract.
- 28. The Seller shall not make partial delivery of the Goods and/or Services without the prior written consent of the Purchaser.
- 29. Should the Seller fail to deliver the Goods and/or Services by any specified date in the Contract for any reason whatsoever the Purchaser (without prejudice to any other right or remedy which it may have) reserves its right to cancel the Order or such part of the Order that has not been delivered and rescind the Contract, whereupon the Purchaser reserves the right to charge the Seller any additional costs, losses or expenses which it may incur due to such failure by the Seller.
- 30. The Seller shall indemnify the Purchaser for any claims, losses or demands made against it of whatever nature as a result of any failure to deliver the Goods and/or Services in accordance with the terms of the Contract.
- 31. In addition to any other right hereunder the Purchaser, acting at all times reasonably, shall be entitled to postpone the date of delivery for such period as shall be deemed by it to be reasonable upon giving notice in writing to the Seller.

Passing of Property

- 32. Title in and to any Goods shall pass to the Purchaser (or its Associate) on final payment of the Contract Price, but without prejudice to any right of rejection that may accrue to the Purchaser. In all events risk shall remain with the Seller and shall only pass to the Purchaser on delivery of the Goods or where the Services include installation of the Goods into the works, when that installation has occurred.
- 33. Title in and to any Goods shall pass to the Purchaser automatically on the happening of a Seller insolvency event as described in Clause 50.
- 34. Where title in any Goods has passed to the Purchaser (or its Associate) in accordance with Clause 32 but such Goods remain within the possession of the Seller, the Seller shall insure all such items at its own cost under a policy of insurance protecting the interests of the Purchaser, its Associate

(where applicable) and the Seller until such time as the Goods have been delivered to the Site. Furthermore, the Seller shall ensure that all such Goods have been set apart and have been clearly and visibly marked (whether individually or collectively) such that the marks remain legible until they are delivered, and the Seller shall allow the Purchaser (or its Associate) to inspect such Goods upon reasonable prior notice and during normal working hours.

- 35.** Should an insolvency event occur, pursuant to Clause 50 of this Contract, the Purchaser shall be entitled to enter the Sellers premises and regain possession of any of its Goods.

Completion

- 36.** The Seller shall notify the Purchaser not less than 7 days prior to the date on which it considers that it will have completed the Services. The Seller shall allow the Purchaser, its representatives and its nominees to inspect the Services and where the Purchaser notifies the Seller that any part of the Services have not been carried out in accordance with the terms of this Contract, the Seller shall rectify the default at its own cost and shall provide the Purchaser not less than 5 days' written notice of the date on which it considers that any rectification works have been completed and shall allow the Purchaser, and its representatives the opportunity to re-inspect. This process is without prejudice to the provisions of Clause 14.

Rejection

- 37.** The Purchaser may by notice in writing to the Seller reject the Goods and/or Services if they are not delivered as deemed by the Purchaser in compliance with the Contract and, having provided evidence of such non-compliance.

Payment of the Fees

- 38.** The Purchaser shall pay the Seller the Contract Price in accordance with the agreed schedule of payments as specified in the Contract.
- 39.** The date of the Seller's invoice shall be the due date for payment (the "Due Date for Payment").
- 40.** The final date for payment shall be 30 days (unless agreed otherwise between the Parties) from the Due Date for Payment (the "Final Date for Payment") and the Purchaser shall, subject to Clause 41, make payment to the Seller on or before the Final Date of Payment.
- 41.** Notwithstanding any other provisions, where the Seller becomes Insolvent before the Final Date for Payment, the Purchaser shall not be required to make any payment to the Seller on or before the Final Date for Payment.
- 42.** Where the Purchaser fails to make payment to the Seller by the Final Date for Payment, the Seller shall be entitled to charge interest at the rate of 2% per annum above the Bank of England base rate until the payment is made in full.
- 43.** Any variation to the Goods and/Services and to the Contract Price shall only be valid if made in writing and agreed and signed by both Parties.

Intellectual Property

- 44.** All IPR in or arising out of or in connection with the Goods and/or Services shall remain the property of the Seller. The Seller hereby grants to the Purchaser a perpetual, transferable, non-exclusive, royalty free, irrevocable licence in respect of the IPR in any Goods and/or Services (including any trademarks, patents, copyrights, moral right, design) howsoever arising or used under the Contract. Any licence under this Clause 44 shall include, without limitation, a right to

use, amend, copy, or modify any IPR in the Goods and/or Services. The Purchaser shall be permitted to grant sub-licences on the same terms, mutatis mutandis, as those of the licence granted by the Seller to Purchaser under this Clause 44.

- 45.** Each Party warrants that to their best knowledge and belief the Goods and/or Services shall not in any way infringe the IPR of any third party and nor will the Purchaser's use of such Goods and/or Services do so.
- 46.** The Seller agrees to fully indemnify and keep the Purchaser fully indemnified against any expense, liability, loss, demand, claim or proceedings in respect of any infringement or alleged infringement of IPR arising from the Purchaser's use or integration of the Goods and/or Services.

Assignment and Sub-Contracting

- 47.** The Seller shall not, without the prior written consent of the Purchaser, sub- contract, assign or transfer this Contract in whole or in part to any other person. The Purchaser shall be entitled to assign, transfer or charge the benefit of this Contract to any person without the consent of the Seller.
- 48.** Where consent is given by the Purchaser to allow the whole or part of the Contract to be sub-contracted pursuant to Clause 47, any act or omission of any such sub-contractor shall, for the purposes of this Contract, be deemed to be an act or omission of the Seller.

Termination of the Contract

- 49.** The Purchaser may terminate this Contract at any time upon 14 days' written notice to the Seller.
- 50.** The Purchaser may terminate this Contract immediately where:
 - a. The Seller commits a material breach of any of the provisions of this Contract and if the breach is capable of remedy, fails to remedy the material breach within 14 days of written notice from the Purchaser specifying the material breach;
 - b. The Seller has committed misconduct and/or a serious or persistent breach in respect of its obligations hereunder or serious or persistent negligence in relation to the Services;
 - c. The Seller ceases, or threatens to cease, to carry on business;
 - d. An encumbrancer takes possession or where the Seller is a company, a receiver is appointed, of any of the property or assets of the Seller;
 - e. The Seller makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - f. The Seller has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement).

Effects of Termination

- 51.** Where this Contract is terminated by reason of Clause 50, the Purchaser shall have no further liability to make any payment to the Seller and shall be entitled to retain the Goods and/or Services provided at that date.
- 52.** Where the Purchaser has terminated this Contract in accordance with Clause 48, the Seller shall be entitled to payment on a quantum meruit basis and the Purchaser shall be entitled to retain the Goods and/or Services provided at that date.

53. Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after the expiry or termination of this Contract shall remain in full force and effect;
54. Termination shall not affect or prejudice any right to damages or other remedy which the Purchaser may have in respect of the event giving rise to the termination or any other right to damages or other remedy which the Purchaser may have in respect of any breach of this Contract which existed at or before the date of termination;
55. Subject as provided in this Clause 51-54 and except in respect of any accrued rights, the Purchaser shall not be under any further obligation to the Seller; and the Seller shall (except to the extent referred to in Clause 65-66) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the Purchaser any documents in its possession or control which contain or record any Confidential Information.

Liability and Indemnity

56. Subject to Clause 57, the Sellers total aggregate liability to the Purchaser arising under or in connection with this Contract including liability in contract, tort (including negligence), misrepresentation or otherwise shall not exceed the Contract Price (including any variations) charged for
57. the Goods and/or Services.
Nothing in this Contract shall limit or exclude liability in respect of:
 - a. Death or personal injury;
 - b. Fraud or fraudulent misrepresentation;
 - c. Wilful misconduct, or gross negligence;
 - d. Any indemnity under this Contract; or
 - e. Any other liability that cannot be excluded or limited under applicable law.
58. Save for the liabilities referred to in Clause 57 in respect of which liability shall not be limited or excluded, neither Party shall have any liability to the other for any indirect or consequential losses (howsoever arising).
59. The Seller shall indemnify the Purchaser and its Associates in respect of all damages or injury to any person or to any property and against all actions, suits, claims, demands, costs, charges and expenses arising in connection with the supply of Goods and/or Services under this Contract, caused by the Sellers negligence.
60. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.

Waiver

61. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

Force Majeure

62. The Parties shall not be liable for failures or delay in performing any obligations whatsoever under this Contract arising from any cause beyond their reasonable control, generally called "force majeure". Such causes include, but are not limited to: power failure, internet service provider

failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, pandemic, epidemic, governmental action or any other similar or dissimilar event or circumstance that is beyond the control of the Party in question

- 63.** Except where the nature of the event shall prevent it from doing so, the Party suffering such cause shall notify the other Party promptly and shall to the extent it is capable of doing so use its reasonable endeavours to mitigate against such cause.
- 64.** In the event that a Party to this Contract cannot perform their obligations hereunder as a result of Force Majeure for a continuous period of 3 months, the other Party may at its discretion terminate this Contract by written notice at the end of that period. Each Party shall bear its own costs in relation to a Force Majeure event.

Confidentiality

- 65.** Each Party undertakes that, except as provided by Clause 66 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Contract and for 2 years after its termination:
- a. keep confidential all Confidential Information
 - b. not disclose any Confidential Information to any other party;
 - c. not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Contract;
 - d. not make any copies of, record in any way or part with possession of any Confidential Information; and
 - e. ensure that none of its directors, officers, employees, agents, Workers or sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of Clauses 64 a-d above .
- 66.** Each Party may
- a. disclose any Confidential Information to:
 - i. any sub-contractor or supplier of that Party;
 - ii. any governmental or other authority or regulatory body; or
 - iii. any employee or officer of that Party or of any of the aforementioned persons, parties or bodies

to such extent only as is necessary for the purposes contemplated by this Contract (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under Clause 65a or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be, as nearly as practicable in the terms of this Clause, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made;

- b. use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Contract, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

- c. Use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Contract, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

- 67.** Where there is a Non-Disclosure Agreement (NDA) in place between the Purchaser and the Seller, the provisions of such NDA shall take precedence over this Confidentiality Clause.
- 68.** The Seller shall not be permitted to use the Purchaser's name, brand or any other IPR belonging to it in any announcement, press release or publicity statement whatsoever without the Purchaser's prior written consent.

Law and Jurisdiction

- 69.** This Contract shall be governed by and construed in accordance with the laws of England and Wales.
- 70.** Subject to the provisions of Clause 71-74, any dispute, controversy, proceedings or claim between the Parties relating to this Contract shall fall within the jurisdiction of the courts of England and Wales.

Dispute Resolution

- 71.** The Parties shall attempt to resolve any dispute arising out of or relating to this Contract through negotiations between their appointed representatives who have the authority to settle such disputes.
- 72.** If negotiations under Clause 71 do not resolve the matter within 21 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.
- 73.** If the ADR procedure under Clause 72 does not resolve the matter within 30 days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to adjudication by either Party.
- 74.** The adjudication shall be conducted in accordance with the provisions of Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (the "Adjudication Regulations").

Severance

- 75.** If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such terms, condition or provision shall not affect the validity, legality and enforceability of the other provisions of, or any other documents referred to in, the Contract.

Third Party Rights

- 76.** Any person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce provisions of the Contract or these Terms of Business.

Modern Slavery

- 77.** The Seller shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time enforced including but not limited to the Modern Slavery Act 2015

and shall have and maintain throughout the term of the Contract its own policies and procedures, which shall be available upon request by Purchaser, to ensure its compliance with this clause. Any breach of this clause shall be a material breach of Contract, and subject to termination pursuant to clause 50a of this Contract.

Entire Agreement

- 78.** This Contract contains the whole agreement between the Parties relating to the transactions contemplated by this Contract and supersedes all previous agreements between the Parties relating to the subject matter of this Contract.

Representations

- 79.** Each Party acknowledges that in entering into this Contract, it has not relied on any express or implied representation, warranty or other assurance made by or on behalf of the other party. Each Party agrees that it shall have no claim for innocent or negligent misstatement based on any statement in this Contract.

Amendments

- 80.** No changes, modifications or amendments to this Contract shall be valid unless agreed to by both Parties in writing and signed by their authorised representative.

Notices

- 81.** Any notice or other communication to be given under this Contract shall be in writing and delivered by hand, first class post or email.