

# FEC ENERGY LTD – STANDARD CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

These conditions set out the terms on which FEC Energy Ltd, trading as FEC Energy (“We”) has agreed to supply services to the Customer named overleaf (“You”). They also set out the terms on which any goods supplied by us in connection with such services are supplied.

## 1. DEFINITIONS

For ease of reference certain terms used elsewhere in these conditions are defined as follows:

“Goods”	means any machinery, tooling, apparatus, materials, products, goods and articles of any kind supplied by us to you in connection with the provision of the Services.
“Intellectual Property Rights”	means any patent, copyright, design right, trade mark, confidential information, knowhow and all similar rights whether or not registered or capable of registration arising from the performance of the Services or the supply of the Goods.
“Price”	means the price specified in the quotation together with Value Added Tax and any other applicable taxes or duties.
“Services”	means the work and services which we have agreed to carry out for you (including where appropriate the supply of any Goods). The Services are more fully described in the accompanying quotation.

2. We agree to carry out the Services and to supply Goods on the terms of these conditions only. We will not be bound by any contrary, different or additional terms or conditions contained or referred to in your order form or other documents or correspondence; nor will we agree to any addition, alteration or substitution of these conditions unless they are expressly accepted by us in writing by a person authorised to sign on our behalf.

## 3. OUR OBLIGATIONS

3.1 The scope of the Services is set out in the quotation. We will perform those Services with all reasonable skill care and diligence. We will use all reasonable endeavours to provide the Services within any time scale indicated in the quotation. However, that time scale is only an estimate and accordingly we can accept no responsibility or liability, financial or otherwise in the event that we are unable for any reason to keep to the timetable.

3.2 We may perform the Services ourselves or where at our discretion we consider it necessary or desirable we may instruct third parties to carry out the whole or any part of the Services on your behalf.

3.3 Where we have agreed to supply Goods the description of those Goods is set out in the quotation. Unless the quotation provides otherwise no other descriptive material or specification whether written or oral contained in any correspondence or statement or in promotional or sales literature shall form any part of our agreement.

3.4 We may suspend or cease performance of the Services or delivery of Goods at our discretion if at any time you are in breach of your obligations under these conditions or we have reason to believe that you may not be able to pay your debts as they fall due or there is any change in your ownership or control which for whatever reason we consider makes it unsuitable or undesirable for us to continue to work for you in any such case we shall notify you in writing and on such notification we shall have no further liability or obligation to you.

## 4. PRICE AND PAYMENT TERMS

4.1 You are to pay the Price in the manner and at the times mentioned in the quotation or if there is no such time or method mentioned in full not later than fourteen days after the date of our invoice to you.

4.2 If payment is not made by the due date we may charge interest on the amount outstanding at the rate 4% above Yorkshire Bank Plc base rate applicable from time to time until payment.

4.3 We are not obliged to start work unless and until you shall have paid to us such sums by way of deposit as shall be specified in our quotation or otherwise agreed between us. If any other monies are not paid by the due date we shall be entitled to stop any work which we are doing on your behalf in relation to the provision of the Services and to suspend delivery of any Goods which may be due. We may also at our discretion take any other action which is open to us as at law as we may think fit.

4.4 All prices quoted to you are based on information available to us at the time of quotation. Our Price does not include the cost of carriage, packing, customs, duties, insurance or any other similar item. In the event that any third party providing services to us which are part of the Services specified in the quotation shall raise its charges to us we reserve the right to pass on those increased charges to you in addition to the sum quoted in the quotation.

4.5 In the event that performance of the Services requires us to travel within the United Kingdom the cost of all travel, accommodation and subsistence incurred by our employees or any third party contractor in the performance of the Services shall be included in the Price unless expressly stated otherwise. Where travel is necessary outside the United Kingdom then all travel accommodation and subsistence expenses incurred by our employees or any third party contractor in the performance of the Services together with the cost of obtaining all necessary entry residence work and exit documents shall be paid by you in addition to the Price.

4.6 We reserve the right to raise an additional charge on you in the event that the assumptions specified in the quotations prove to be incorrect for whatever reason and in particular we reserve the right to increase the Price if work has to be performed outside normal working hours or if the nature, extent or scope of the Services is altered in any way during the course of our providing the Services. We also reserve the right to increase the Price if delays are caused or if we have to carry out extra work as a result of anything which you may do or fail to do.

## 5. YOUR OBLIGATIONS TO US

5.1 You must promptly provide us with all information and assistance that we may reasonably require in connection with the performance of the Services.

5.2 Where the Services are to be provided at your premises or elsewhere than at our premises you are to make available free of charge all gas, electricity, heating and water required by us together with such facilities for the use of our employees and any third party contractors as shall be required in order to enable us to comply with relevant legislation concerning their health, safety and well-being and to perform the Services.

5.3 You are to carry out any preparatory works specified in our quotation in good time to enable the Services to be supplied promptly and effectively.

5.4 You are to disclose to us the presence of any hazardous machinery or substance in any place where we are to provide the Services and to give us full information as to the nature of any such hazard. If you do not do so we may refuse to perform or to complete the Service without being under any further obligation to you.

5.5 You are to obtain any necessary consents or permits required from any local or governmental authority to enable the Services to be carried out.

## 6. INTELLECTUAL PROPERTY RIGHTS

6.1 The Intellectual Property Rights shall remain our property unless and to the extent stated in the quotation. Provided that you comply with all your obligations as to payment and otherwise we grant to you a personal non-exclusive licence to use the Intellectual Property Rights in the normal course of your business but not further or otherwise. You may not grant any sub-licence nor transfer the benefit of the licence hereby granted without our prior written consent.

6.2 Copyright in all drawings, reports, calculations and other documents provided by us in connection with the Services belong to us. You may not make copies of the same or any part of them without our agreement which must be in writing to be valid.

6.3 Where any software (including without limitation any bespoke software) is provided by us the copyright in such software shall remain our property and you shall use the same only as provided in our Software Licence to be entered into with or as soon as possible after this Agreement.

6.4 If the quotation expressly states that Intellectual Property Rights in connection with the Services or any part thereof are to become your property you will grant to us a non-exclusive royalty free licence to use the same for all purposes connected with our business without limit of time and in particular to use the Intellectual Property Rights and any development thereof which we may undertake in connection with Goods and Services supplied by us to our other customers.

6.5 Unless we have told you otherwise to the best of our knowledge and belief neither the supply of the Goods nor the supply of the Services to you will result in the infringement of any third party's Intellectual Property Rights. In the event however that any claim is made against you by any third party for infringement of such rights as a result of your use of any Goods or Services supplied by us we reserve the right at our own expense to conduct any ensuing litigation and all negotiations for a settlement of the claim. We will bear the cost of any payments (either by way of a lump sum or a continuing royalty payment) made in settlement or as a result of an award in a judgement against us in the event of litigation.

6.6 We will grant you the benefit of condition 6.5 only if you give to us the earliest possible notice in writing of any such claim being made or action threatened or brought against you, you make no

admission of liability and take no other action in connection therewith, you permit us to have the conduct of the claim and give us all reasonable information, co-operation and assistance in relation to the conduct of the claim (including lending your name to proceedings). In addition, if it is made a condition of any settlement made by us or judgement awarded against you, you will return or destroy as applicable all infringing Goods or documents still under your control subject to a refund by us of any payment for such goods already made (less a reasonable allowance for depreciation).

6.7 The provisions of Condition 6.5 shall not apply to any infringement caused by us in following a design or instruction furnished or given to you nor to any use of the Goods or Services in a manner or for a purpose which shall have been specifically prohibited in writing by us nor to any infringement which is due to the use of such Goods or Services in association or combination with any other product.

6.8 You warrant that any design or instruction furnished or given by you shall not be such as will cause us to infringe any intellectual property rights.

6.9 The provisions set out in condition 6.5 above states our entire liability to you and your sole and exclusive remedies against us in connection with claims based on or resulting from the infringement of intellectual property rights of any kind whatsoever of any third party.

## 7. CONFIDENTIALITY

You acknowledge that you rely on your own skill and judgement in determining the suitability of the Goods and the Services for any particular purpose. You are alone responsible for ensuring that any performance requirement indicated in the quotation is sufficient and suitable for your purpose save in so far as we have expressly agreed in writing that you may rely on our advice.

## 8. RELIANCE ON SKILL AND JUDGEMENT

You acknowledge that you rely on your own skill and judgement in determining the suitability of the Goods and the Services for any particular purpose. You are alone responsible for ensuring that any performance requirement indicated in the quotation is sufficient and suitable for your purpose save in so far as we have expressly agreed in writing that you may rely on our advice.

## 9. LIABILITIES

9.1 We do not accept liability in any circumstances and whether in contract, tort or on any other basis whatsoever and however caused for:

9.1.1 Any loss of profit, business, contracts, revenues or anticipated savings or:

9.1.2 Any special, indirect or consequential damage of any nature whatsoever.

9.2 Subject to condition 9.1 and to the overall limitations on liability set out below we will accept liability to you for any loss and/or damage arising by reason of negligence on the part of our employees or any breach on our part of our contractual obligations to you.

9.3 Our total liabilities to you shall be determined by the manner in which our contractual obligations to you are breached, such that:

9.3.1 In the event that a contract termination window is missed through negligence on our behalf, our liabilities shall not in any event exceed the sum of the commission fees to which FEC is contractually entitled to claim from the energy supplier relating to that improperly terminated contract only, and:

9.3.2 For all other scenarios, whether in contract tort (including negligence or breach of statutory duty) breach of third party rights or otherwise howsoever arising, our liabilities shall not in any event exceed whichever shall be the lesser of one million pounds and five times the Price.

9.4 In so far as we are able to do so and at your expense we will assign to you the benefit of any warranties and conditions relating to quality, suitability, fitness for purpose or quiet possession contained in any contract which we may have with any third party for the supply of any component included within the Goods.

9.5 You accept responsibility for any inaccuracies, errors or omissions on your part in relation to instructions given by you or in any data, drawings, calculations, specifications, information or material supplied to us for the purpose of enabling us to make the Goods or perform the Services.

9.6 We will not accept liability for any loss arising as a result of delay howsoever caused.

9.7 Termination of our agreement for whatever reason shall not affect any rights or liabilities which have already accrued at the time of termination.

## 10. DEFECTS

In the event that defects appear in the Goods or Services within six months after the date of delivery thereof we will make resources available to investigate such defects and provided that in the case of Goods the Goods have been properly used, cared for and maintained by you we shall endeavour to rectify the defect. Provided that the defect arises solely as a result of faulty design materials or workmanship on our part such attempt at rectification shall be carried out free of charge to you.

## 11. YOUR INDEMNITY TO US

11.1 We require you to indemnify us from and against all claims, actions, demands, proceedings, damages, costs, charges and expenses arising out of or in connection with the supply of the Goods and Services to you.

(a) To the extent that any such claim etc shall exceed the limit of liability specified in condition 9.3 above.

(b) Where any such claim or loss arises as a result of any breach on your part of any of your obligations under these conditions.

(c) In any event where such claims or actions are brought or threatened against us by a third party as a result of your use of the Goods or the Services in the manufacture, supply or distribution of any other goods or in the provision of a service to a third party.

11.2 Neither we nor you shall be liable for any loss or damage arising from any occurrence unless a claim is formally notified in writing before the expiry of two years from the date of our quotation.

## 12. TIME AND FORCE MAJEURE

12.1 Unless expressly so stipulated by you and agreed in writing by us, time for performance of the Services shall not be of the essence.

12.2 We will not be in any event be responsible for any delay in or failure to perform the Services or to supply the Goods which is caused by factors beyond our reasonable control which shall include but not be limited to acts of God, acts of governmental or any other lawful authority, strike, war, riot, civil commotion, flood, fire, explosion, epidemic, trade embargo or any other acts or omissions on the part of any third party or sub-contractor or any failure of electricity or other fuel or equipment.

## 13. ASSIGNMENT AND AGREEMENT

13.1 You may not assign this Agreement in whole or in part without our prior written consent.

13.2 The quotation and these conditions sets out the entire Agreement and understanding of both of us relating to the subject matter thereof and supersedes all prior discussions between us and all prior memoranda of intent or understanding and all previous documentation.

## 14. RETENTION OF TITLE AND RISK

14.1 Where Goods are to be supplied to you they will remain our property until you have paid for both Goods and Services in full.

14.2 Whilst the Goods remain in our ownership you may not sell or permit any lien to be created over them and you shall take proper care of the Goods and keep them separate from your own goods and clearly identified as belonging to us.

14.3 The Goods shall be at your risk as from the time they leave our premises and whether or not delivered to you or to any agent on your behalf.

## 15. WAIVER

If either of us shall positively waive or delay or not insist in any instance on full compliance by the other with any of these terms that shall not prevent him from subsequently requiring such compliance in respect of that instance by the other party (subject always to reasonable notice in the case of a positive waiver).

## 16. GOVERNING LAW AND DISPUTES

The construction, validity and performance of the Agreement between us shall be governed in all respects by English law and we each agree to submit to the non-exclusive jurisdiction of the English courts.