



1. TERMS AND CONDITIONS

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

2. INTERPRETATION

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

3. APPLICATION OF TERMS

- 3.1 Subject to any variation under clause 3.2 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any Order, specification or other document).
- 3.2 Any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Managing Director of the Company, or his designated deputy.
- 3.3 Each Order for Goods from the Customer to the Company shall be deemed to be an offer by the Customer to buy Goods subject to these conditions.

4. DESCRIPTION AND SPECIFICATION

- 4.1 The quantity, quality and description of the Goods shall, subject to these terms and conditions, be as specified in the Company's Order and/or in any applicable Specification supplied or advised by the Customer to the Company.
- 4.2 The Customer shall comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of the goods.
- 4.3 The Company shall not be responsible for repayment to the Company for any direct or indirect costs, losses, damages and expenses howsoever incurred by the Company due to rejection of the Goods or any additional expenditure incurred by the Company in obtaining other Goods to replace the rejected Goods.
- 4.4 Any changes to the Contract required by the Customer shall be made in writing, and shall not come into force unless confirmed in writing by the Company. Should the Customer make any changes in writing relating to the Contract, the Company reserves the right to reasonably increase the cost and delivery schedule accordingly.
- 4.5 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 4.6 No order placed by the Customer shall be deemed to be accepted by the Company until a written confirmation is issued by the Company or (if earlier) the Company delivers the Goods.

5. DELIVERY

- 5.1 Unless confirmed in writing by the Company, all deliveries shall be made as per Incoterms 2010 EXW Unit 12, Eastington Industrial Estate, Eastington, Glos, GL10 3RZ.
- 5.2 Where the Company agrees to arrange delivery, the Company shall not be responsible for any loss or damage to the Goods during transit. The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company shall be conclusive evidence of the quantity received by the Customer unless the Customer can provide conclusive evidence proving the contrary. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would, in the ordinary course of events, have been received. Any liability for non-delivery of the Goods shall be limited to the Contract value.
- 5.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate, and whilst the Company will make reasonable efforts to achieve said delivery dates, time shall not be of the essence of the Contract. If no dates are specified, delivery shall be within a reasonable time.
- 5.4 Under no circumstances will the Company be liable for any liquidated damages as a result of late deliveries.
- 5.5 If, for any reason, the Customer fails to accept delivery of any of the Goods when they are ready for delivery in accordance with clause 5.1:-
 - (a) The Goods shall be deemed to have been delivered; and
 - (b) Risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence); and



(c) The Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses including, without limitation, costs of storage.

- 5.6 In the case that the Goods are delivered earlier than the delivery date or schedule, the Company reserves the right to invoice upon delivery, and the Customer shall pay in line with these conditions.
- 5.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the Contract. Each instalment shall be a separate Contract, and no cancellation or termination of any one instalment shall entitle the Customer to repudiate or cancel any other instalment except as detailed in these conditions.
- 5.8 Where free issue parts are to be supplied by the customer, the delivery date or schedule may vary depending on the Company's workload at the time of delivery. All free issue parts must be delivered to the Company's address with full identification (e.g. Customer name, Order number etc). If parts are received without such identification, the Company shall not be liable for any damage howsoever caused to the parts before they are identified. Free issue parts must be delivered to the Company in a clean, safe and appropriate condition, otherwise the Company reserves the right to charge a reasonable fee for rectification. The customer must also ensure that free issue parts comply with all relevant laws and regulations, and notify the Company of any special requirements.
- 5.9 Where Customer approval is required, the delivery date or schedule may vary depending on the Company's workload at the time of approval. In this case, no work shall be carried out until approval is received in writing.
- 5.10 Where access to the Company's premises is necessary in connection with the Order, the Customer and its inspectors shall at all times comply with the reasonable requirements of the Company with respect to quality, the environment, and health and safety. In addition reasonable notice must be given. If excessive inspection is required, the Company reserves the right to charge the Customer a reasonable fee to cover the costs of accommodating such inspection.
- 5.11 Where Customer approval is required, the delivery date or schedule may vary depending on the Company's workload at the time of approval. In this case, no work shall be carried out until approval is received in writing.
- 5.12 Unless otherwise agreed in writing by the Company, the Company shall not provide any packing materials. Goods will be delivered using the same or similar packaging to that in which they arrived.

6. PRICE AND PAYMENT

- 6.1 Unless otherwise agreed in writing between the Company and the Customer, all prices are given as per Incoterms 2010 EXW Unit 12, Eastington Industrial Estate, Eastington, Glos, GL10 3RZ.
- 6.2 The price for the Goods shall be exclusive of any value added tax and all costs or charge in relation to packaging, unloading, carriage and insurance, all of which shall be paid by the Customer in addition when it is due to pay for the Goods.
- 6.3 The Company reserves the right to amend the price if the scope of work changes, or any unforeseen costs arise, howsoever caused.
- 6.4 The price shall be in the currency agreed between the Company and the Customer, or in the absence of such agreement, in GB Pounds Sterling.
- 6.5 Unless otherwise agreed, payment shall be made within 30 days of the invoice date.
- 6.6 Time for payment shall be of the essence of the Contract.
- 6.7 The Company reserves the right to remove any credit facility offered to the Customer for any reason. In such case, further invoices shall be paid on a proforma basis.
- 6.8 No payment shall be deemed to have been received until the Company has received cleared funds.
- 6.9 The Customer shall make all payments due under the Contract in full without any deduction by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring so.
- 6.10 The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

7. RISK AND OWNERSHIP

- 7.1 The Goods are at the risk of the Customer from the time of delivery.
- 7.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:-
- (a) The Goods; and
 - (b) All other sums which are or which become due to the Company from the Customer on any account.
- 7.3 Until ownership of the Goods has passed to the Customer, the Customer shall:-
- (a) Hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) Store the Goods (at no cost to the Company) separately from all other Goods of the Customer or any other third party in such a way that they remain readily identifiable as the Company's property;
 - (c) Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) Maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks, to the reasonable satisfaction of the Company. On request, the Customer shall produce the policy of insurance to the Company.
- 7.4 Until ownership of the Goods has passed to the Customer, the Customer shall:-
- (a) Hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) Store the Goods (at no cost to the Company) separately from all other Goods of the Customer or any other third party in such a way that they remain readily identifiable as the Company's property;
 - (c) Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) Maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks, to the reasonable satisfaction of the Company. On request, the Customer shall produce the policy of insurance to the Company.
- 7.5 The Customer may resell the Goods before ownership has passed solely on the following conditions:-
- (a) Any sale shall be effected in the ordinary course of the Customer's business as full market value; and
 - (b) Any such sale shall be a sale of the Company's property on the Customer's own behalf, and the Customer shall deal as principle when making such as sale.



- 7.6 The Customer's right to possession of the Goods shall terminate immediately if:-
- (a) The Customer has a bankruptcy order made against it, or makes an arrangement with creditors, or otherwise takes advantage of any statutory provision for the relief of insolvent debtors, or convenes a meeting of creditors, or enters into liquidation (whether voluntary or compulsory), or has a receiver or administrator appointed on its behalf; or
 - (b) The Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or is unable to pay its debts, or ceases to trade.
- 7.7 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company. The Company reserves the right to collect the Goods should payment not be made within 2 months of the due date in accordance with these conditions.
- 7.8 The Customer grants the Company, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them or, where the Customer's right to possession has terminated, to recover them.
- 7.9 On termination of the Contract, howsoever caused, the Company's rights contained within this section shall remain in effect.

8. WARRANTIES AND LIABILITY

- 8.1 The Company warrants to the Customer that upon delivery, and for a period of 1 year afterwards, the Goods shall:-
- (a) Conform in all respects of the Specification
 - (b) Be of satisfactory quality within the meaning of the Sales of Goods Act 1970
 - (c) Be reasonably fit for purpose (where such purpose has been made clear to the Company)
- 8.2 The Company shall not be liable for a breach of any of the warranties in condition 8.1 unless:-
- (a) The Buyer gives notice to the Company within 14 days of the appearance of the breach
 - (b) The Company is given a reasonable opportunity to inspect the Goods
- 8.3 The Company shall not be liable for a breach of any of the warranties in condition 8.1 if:-
- (a) The Customer makes any further use of the Goods after giving notice;
 - (b) The defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods, or (if there are none) good industry practice;
 - (c) The Customer alters or repairs the Goods without the written consent of the Company;
 - (d) The Goods have been passed by an inspection authority appointed by or on behalf of the Company; or
 - (e) The defect arises from the Specification.
- 8.4 The warranties in condition 8.1 do not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty as is given by the manufacturer to the Company.
- 8.5 Subject to conditions 8.2 and 8.3, if any of the Goods are found to be defective, the Company shall repair such Goods (or the defective part). The Company shall then be discharged from any further liability.
- 8.6 Goods are supplied in accordance with normal industry standards and tolerances unless otherwise stated by the Company. Certification and documentation is supplied on request, and may be charged for.
- 8.7 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent of the law, excluded from the Contract.
- 8.8 Nothing in these conditions shall exclude or limit the liability of the Company for death or injury caused by the Company's negligence, or under section 2(3) of the Consumer Protection Act 1987, or for fraud or fraudulent misrepresentation, or for any matter for which it would be illegal for the Company to exclude or limit its liability.
- 8.9 Subject to conditions 8.7 and 8.8, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract, shall be limited to the Contract price.
- 8.10 The Company shall not be liable to the Customer for any direct, indirect or consequential loss, including pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 8.11 The Company shall not be liable for any claims relating to free issue material, Specifications, parts or equipment supplied by the Customer to the Buyer.

9. TERMINATION

- 9.1 The Company reserves the right to terminate the Contract for any reason without compensation. In this case, any free issue material shall be made available for the Customer to collect in accordance with these conditions.
- 9.2 If the Contract is terminated, by either party, the Customer shall pay to the Company the value of all work carried out up to the date of termination, plus a reasonable termination charge.

10. ASSIGNMENT

- 10.1 The Customer shall not be entitled to assign the Contract, or any part of it, without the prior written consent of the Company.
- 10.2 The Company may assign the Contract or any part thereof to any person, firm or company.

11. FORCE MAJEURE

- 11.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation:-
- (a) Governmental actions, war, threat of war or national emergency;
 - (b) Acts of terrorism, protests, riots, civil commotion;
 - (c) Act of God, fire, explosion, flood or epidemic;
 - (d) Lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce);



- (e) Inability to obtain, or delay in obtaining, supplies of adequate or suitable material, fuel, parts, machinery or labour;
- (f) A power failure or breakdown of machinery.

12. COMMUNICATIONS

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

13. GENERAL

- 13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.