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| **GENERAL CONDITIONS OF CONTRACT** |

**Contract Title:**

**Contract Reference:**

**STANDARD TERMS AND CONDITIONS FOR PROVISION OF GOODS**

# DEFINITIONS

## In these Conditions the following expressions shall have the following meanings unless inconsistent with the context:

“Authorised” means signed by one of the Authorised Representatives;

“Authorised Representative” means the ORE Catapult’s employee authorised, either generally or specifically, by the ORE Catapult to sign the Purchase Order, confirmation of which may be obtained from the ORE Catapult’s Chief Financial Officer;

“ORE Catapult” means the Offshore Renewable Energy Catapult, (Company Number 04659351) whose registered office is Offshore House, Albert Street, Blyth, Northumberland, NE24 1LZ.

“Conditions” means these terms and conditions of purchase together with any others set out in the Purchase Order, any Order Amendment or otherwise agreed in writing between ORE Catapult and Seller. For the avoidance of doubt where there are any inconsistencies between these terms and conditions and those in other documents then such additional expressly agreed terms shall take precedence over these terms and conditions;

“Contract” means the contract for the purchase and sale of Goods which shall be subject to the Conditions. For the avoidance of doubt the Contract shall not include any of the Seller’s conditions of sale, notwithstanding reference to them in any document. However, should this Contract be held by a court of competent jurisdiction to include the Seller’s terms and conditions of sale then in the event of any conflict or apparent conflict, these terms and conditions of purchase shall always prevail over the Seller’s terms and conditions of sale. Written acceptance of a Purchase Order and/or Amendment Order or delivery in response to a Purchase Order and/or Order Amendment shall be taken to imply that the Seller has accepted the Conditions and the Contract shall come into existence on that date;

“Goods” means the goods and/or services described in the Purchase Order and/or Amendments Order;

**“**Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, moral rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights of any nature, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“In writing” includes fax transmission and electronic communications but no formal written notice to be served under this Contract shall be served by electronic communications;

“Order Amendment” means the ORE Catapult’s Authorised Order Amendment or series of Order Amendments, each Order Amendment having precedence over any earlier Order Amendment;

“Price” means the price set out in the Purchase Order and/or Amendment Order or if no price is quoted, the price set out in the Seller’s published price list in force at the date the Contract came into existence;

“Purchase Order” means the ORE Catapult’s Authorised Purchase Order having these terms and conditions of purchase on its reverse, attached to it or referred to them on its face; and

“Seller” means the party to whom the Purchase Order and/or Amendment Order is addressed.

## References to any statute or statutory provision shall include any subordinate legislation made under it, and any subsequent legislation that adds to or replaces it.

## The descriptive headings to Conditions, schedules and paragraphs are inserted for convenience only, have no legal effect and shall be ignored in the interpretation of these Conditions.

## Words importing the singular include the plural and vice versa, words importing a gender include every gender and reference to persons include an individual, company, corporation, firm, partnership, unincorporated association or body of persons.

## The words and phrases “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.

## A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

## A reference to a Party includes its [personal representatives,] successors or permitted assigns;

## A reference to writing or written includes faxes [and e-mails].

# PRICE

## The Seller shall sell the ORE Catapult the Goods for the Price, in accordance with these Conditions.

# CHANGES

## The ORE Catapult shall have the right, before delivery, to send the Seller an Order Amendment adding to, deleting or modifying the Goods. If an Order Amendment will cause a change to the Price or delivery date then the Seller must suspend performance of the Contract and notify the ORE Catapult without delay, calculating the new Price and delivery date at the same level of cost and profitability as the original Price. The Seller must allow the ORE Catapult ten (10) days to consider any new Price and delivery date. The Order Amendment shall take effect when and only if an Authorised Representative accepts in writing the new Price and delivery date within the time the Seller stipulates, being not less than ten (10) days. If an Authorised Representative fails to confirm the Order Amendment within the time the Seller stipulates, being not less than ten (10) days, then performance of the Contract shall immediately resume as though the said Order Amendment had not been issued (for the avoidance of doubt, in these circumstances the ORE Catapult may still exercise the ORE Catapult’s right of cancellation in accordance with Condition 4).

# BUYER’S RIGHT OF CANCELLATION

## In addition to the ORE Catapult’s other rights of cancellation under the Contract, the ORE Catapult may cancel the Purchase Order and any Order Amendment thereto at any time by sending the Seller a notice of termination. The Seller will comply with any instructions that the ORE Catapult may issue with regard to the Goods. If the Seller submits a termination claim then the ORE Catapult will pay to the Seller the cost of any commitments, liabilities or expenditure which in the ORE Catapult’s reasonable opinion were a direct consequence of the Contract at the time of termination. The total of all payments made or due to the Seller under the Contract, including any termination payment, shall not exceed the Price. If the Seller fails to submit a termination claim within one (1) month of the date of the ORE Catapult’s notice of termination then the ORE Catapult shall have no further liability under the Contract.

## There is no guarantee that the volume of work and data provided by the ORE Catapult is accurate and such information given in the Invitation to Tender is for guidance only.

## Nothing contained in this Contract shall prevent the ORE Catapult from employing some person other than the Seller to provide goods similar to the Goods.

# QUALITY AND DESCRIPTION

## The Seller warrants that the Goods shall:

1. conform in every respect with the provisions of the Contract;
2. be capable of all standards of performance specified in the Contract;
3. be fit for any purpose made known to the Seller expressly or by implication and in this respect the ORE Catapult shall rely on the Seller’s skill and judgement;
4. be new (unless otherwise specified on the Purchase Order) and be of sound materials and skilled and careful workmanship;
5. be free from any defects in design, material and workmanship;
6. correspond with their description and any samples, patterns, drawings, plans and specifications referred to in the Contract;
7. be of satisfactory quality, and
8. comply with all current legislation.

# ACCEPTANCE

## All Goods are subject to acceptance by ORE Catapult. Defective Goods and early shipments may be returned at Seller’s risk and expense and the price of returning these Goods (including all associated transportation costs) deducted from remittance. If any portion of a shipment does not conform to the ORE Catapult’s order, ORE Catapult at its option, and without limiting any of its other rights or remedies, may:

1. terminate the Contract;
2. reject and return the entire shipment at the Seller’s own risk and expense;
3. reject and return any or all non-conforming Goods at the Seller’s own risk and expense;
4. accept them at a reduced Price. ORE Catapult’s acceptance of any non-conforming Goods shall not constitute a waiver of specification conformity for any additional Goods required to be delivered by Seller; or
5. require the Seller to repair or replace the non-conforming Goods at the Seller’s own expense.

# PAYMENT

## Unless otherwise agreed in the Contract, the ORE Catapult shall pay the seller the Price within thirty (30) days of receipt of a correctly rendered invoice. The Seller’s invoice must be addressed to the ‘Finance Department’ as indicated on the Purchase Order and must quote the full Purchase Order number. The ORE Catapult shall not be held responsible for delays in payment caused by the Seller’s failure to comply with the ORE Catapult’s invoicing instructions. The Seller may invoice the ORE Catapult for the Goods on or at any time after delivery.

# PROPERTY AND RISK

1. The Seller shall bear all risks of loss or damage to the Goods until they have been delivered and shall insure accordingly.
2. Ownership of the Goods shall pass to the ORE Catapult:
3. when the Goods have been delivered but without prejudice to the ORE Catapult’s right of rejection under the Contract, and
4. if the ORE Catapult make any advance or stage payment, at the time such payment is made, in which case the Seller must as soon as possible mark the goods as the ORE Catapult’s property.

# SELLER’S WARRANTIES

## The Seller warrants that it shall promptly make good at the Seller’s expense any defect in the Goods that the ORE Catapult discovers under proper usage during the first 12 months of actual use or 18 months from the date of acceptance by the ORE Catapult whichever period shall expire first. Such defects may arise from the Seller’s faulty design, the Seller’s erroneous instructions as to use, inadequate or faulty materials, poor workmanship or any other breach of the Seller’s obligations whether under the Contract or at law.

## Repairs or replacements shall themselves be covered by the above warranty for a period of twelve (12) months from acceptance by the ORE Catapult.

## The Seller will ensure that compatible spares are available to facilitate repairs (where applicable) for a period of at least ten (10) years from the date of delivery of the Goods.

## The warranties in Condition 5 above and herein are in addition to all other warranties, express, implied or statutory. Seller shall indemnify, defend and hold ORE Catapult fully harmless from any breach of these warranties and this shall be without prejudice to any other rights or remedies of ORE Catapult. Limitations on ORE Catapult’s remedy in documents of Seller, or otherwise, shall not be effective and are rejected. All warranties and all provisions of this Condition 9 and Condition 5 shall survive inspection or acceptance of, payment for and use of the Goods delivered and completion, termination or cancellation of the Contract, and shall extend to ORE Catapult, its customers, successors and assigns, and to users of the Goods.

# INDEMNITY AND INSURANCE

## The Seller shall indemnify the ORE Catapult against all loss, actions, costs, claims, demands, expenses (including legal and other professional fees and expenses) and liabilities whatsoever (whether direct or indirect) which the ORE Catapult may incur either at common law or by statute in respect of personal injury to or death of any person or in respect of any loss or destruction of or damage to property (other than as a result of any default or neglect of the ORE Catapult or of any person for whom the ORE Catapult is responsible) which shall have occurred in connection with any work executed by the Seller under the Contract or shall be alleged to be attributable to some defect in the Goods.

## The Purchase Order is given on the condition that (without prejudice to the generality of the foregoing Condition 10(a)) the Seller will indemnify the ORE Catapult against all loss, actions, costs, claims, demands, expenses (including legal and other professional fees and expenses) and liabilities whatsoever (whether direct or indirect) which the ORE Catapult may incur either at common law or by statute (other than as a result of any default or neglect of the ORE Catapult or of any person for whom the ORE Catapult is responsible) in respect of personal injury to or death of any of the Seller’s or the ORE Catapult’s employees, agents, sub-contractors or other representatives while on the ORE Catapult’s premises whether or not such persons are (at the time such personal injury or deaths are caused) acting in the course of their employment.

## The Seller will indemnify the ORE Catapult against any and all loss, actions, costs, claims, demands, expenses (including legal and other professional fees and expenses) and liabilities whatsoever caused to the ORE Catapult whether directly or as a result of the action, claim or demand of any third party by reason of any breach by the Seller of these Conditions or of any terms or obligations on the Seller’s part implied by the Sale of Goods Act 1979 (as amended), by the Supply of Goods and Services Act 1982 (as amended) or by any statute or statutory provision relevant to the Contract or to Goods or work covered thereby. This indemnity shall not be prejudiced or waived by any exercise of the ORE Catapult’s rights under Condition 6 above.

## The Seller shall maintain in force, with a reputable insurance company, product liability and public liability insurance, to cover the liabilities that may arise under or in connection with the Contract and shall, on the ORE Catapult's request, produce proof of insurance cover..

# WORK ON THE BUYER’S PREMISES

## If the Contract involves any works or services which the Seller performs on the ORE Catapult’s premises then the following shall apply:

1. The Seller shall ensure that the Seller and the Seller’s employees, the Seller’s sub-contractors and their employees and any other person associated with the Seller will adhere in every respect with the obligations imposed on the Seller by current safety legislation;
2. The Seller shall ensure that the Seller and the Seller’s employees, the Seller’s sub-contractors and their employees and any other person associated with the Seller will comply with any regulations that the ORE Catapult may notify to the Seller.

# PROGRESS AND INSPECTION

## The ORE Catapult shall have the right to check progress at the Seller’s works or the works of sub-contractors at all reasonable times and to inspect and to reject Goods that do not comply with the Contract. The Seller’s sub-contracts shall reserve such rights for the ORE Catapult.

## Any inspection or approval shall not relieve the Seller from the Seller’s obligations under the Contract.

# PACKAGING

## Unless otherwise stated in the Contract, all packaging delivered with the Goods shall be non-returnable. If the Contract states the packaging is returnable the Seller must give the ORE Catapult full disposal instructions before the time of delivery and the packaging must show clearly to whom it belongs. The Seller must pay the cost of all carriage and handling for the return of packaging. ORE Catapult shall not be liable for any packaging lost in transit.

# SAFETY

## The Seller shall observe all legal requirements of UK, the European Union and relevant international agreements in relation to health, safety and environment, and, in particular, to the marking of hazardous goods and the provision of data sheets for hazardous materials.

# DELIVERY

## The Goods shall be properly packed, secured and despatched at the Seller’s expense to arrive in good condition at the date or dates and the place or places specified in the Contract or if no such date is specified, within twenty eight (28) days of the date of the Purchase Order and/or Amendment Order.

## If the Seller or the Seller’s carrier delivers any Goods on the wrong date or to the wrong place then the ORE Catapult may deduct from the Price any resulting costs of storage or transport.

## The Seller shall ensure the Goods are delivered during the ORE Catapult’s normal business hours or as instructed by the ORE Catapult.

## The Seller shall not deliver the Goods in instalments without the ORE Catapult’s prior written consent. Where it is agreed that the Goods are to be delivered in instalments, they may be invoiced and paid for separately.

# LATE DELIVERY

## If the Goods or any part of them are not delivered by the time or times specified in the Contract then the ORE Catapult may by written notice cancel any undelivered balance of the Goods. The ORE Catapult may also return for full credit and at the Sellers’ expense any Goods that in the ORE Catapult’s opinion cannot be utilised owing to this cancellation. In the case of services the ORE Catapult may have the work performed by alternative means and any additional costs reasonably so incurred shall be at the Seller’s expense. This shall not affect any other rights that the ORE Catapult may have.

# INTELLECTUAL PROPERTY

## With the exception of Goods made to the ORE Catapult’s design or instructions, the Seller warrants that neither the Goods nor the ORE Catapult’s use of them will infringe any Intellectual Property Rights undertakes to indemnify the ORE Catapult against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any such right. Seller grants ORE Catapult a limited, non-exclusive, royalty free, worldwide license with the rights to sell, transfer, lease or sub-license to its customers any Intellectual Property Rights associated with the Goods. The provisions of this Condition 17 shall survive termination, cancellation or expiration of the Contract.

## The Seller assigns to the ORE Catapult, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products and deliverables of any and all services described in the Contract.

## The Seller shall, promptly at the ORE Catapult's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the ORE Catapult may from time to time require for the purpose of securing for the ORE Catapult the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the ORE Catapult in accordance with Condition 17(b).

# BUYER’S RIGHT OF SET OFF

## Whenever under the Contract any sums of money shall be recoverable from or payable by the Seller those sums may be deducted from any sums then due, or which may at any later time may become due to the Seller under the Contract or any other contract the Seller may have with the ORE Catapult.

# TERMINATION

## ORE Catapult may at any time upon written notice terminate or cancel the Contract for cause. ‘Cause’ shall mean:

1. a change in circumstances of either party due to an event beyond the control of either party or a disruption in workforce or a disturbance in normal business operations relating to either party’s performance under the Contract;
2. a change in market conditions or the economic condition of either party affecting or potentially affecting performance under the Contract;
3. failure by the Seller, or the Goods to meet a provision of the Contract or ORE Catapult’s expectations under the Contract;
4. a bankruptcy or insolvency proceeding against Seller or an assignation for the benefit of creditors of Seller.

## Seller may cancel the Contract upon ORE Catapult’s material breach under the following Conditions:

1. Seller shall provide written notice of the breach and allow ORE Catapult to cure within twenty eight (28) days;
2. if ORE Catapult cures the breach this Contract shall continue under the original terms;
3. if the breach is not cured the Contract shall terminate and the parties shall have the respective remedies in the Contract.

# ASSIGNATION

## Neither the Contract, any interest therein nor any payment due or to become due hereunder shall be assigned or sub-contracted by Seller, without the prior written request of the ORE Catapult. Any such assignation or sub-contracting by Seller without such consent shall be void. ORE Catapult may assign all of its rights and duties under the Contract to a parent, subsidiary or affiliated company without the consent of the Seller.

# MISCELLANEOUS

## a. The Seller will keep confidential all technology, technical data, commercial information, know-how, specifications, inventions, processes, initiatives and other information which is of a confidential nature and which has been disclosed to Seller by ORE Catapult or its agents and any other confidential information concerning ORE Catapult's business or its products which Seller may obtain as a result of or in connection with the Contract.

## b. The Goods supplied are also subject to the provisions of any existing confidentiality and disclosure agreement between the parties.

## c. The Seller acknowledges and agrees that the ORE Catapult may be required to disclose information to their funding body, InnovateUK.

## The ORE Catapult's failure to enforce or delay in enforcing any term or condition of the Contract or to exercise any right arising hereunder shall not constitute a waiver of ORE Catapult's right to enforce such terms or conditions or exercise such right thereafter.

## Unless otherwise expressly provided all rights and remedies under the Contract are cumulative and are in addition to any other rights and remedies that ORE Catapult may have at law or in equity.

## Any waiver of any right or remedy hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter.

## If any provision of the Contract shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

## Any reference in these Conditions to any statute or statutory provision shall (unless the context otherwise requires) be construed as a reference to that statute or statutory provision as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time.

## The Contract shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.

## Any notice required under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or any other address notified by the receiving party to the party giving the notice. Any notice shall be deemed to be served:-

1. if sent by pre-paid first class post to the party to whom it is given, on the second business day after posting; or
2. if sent by fax to the recipient's fax number at the date and time given on the sender's transmission acknowledgement slip or (in the case of manifest error or loss of the slip) on receipt.

## The ORE Catapult agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of Seller prior to the Contract upon which ORE Catapult relied in entering into the Contract whether such statement was made orally or in writing.

# ANNOUNCEMENTS

## Save as otherwise set out in this Contract, no announcement, circular, advertisement or other publicity in connection with this Contract shall be made or issued by or on behalf of the Seller (save as required by law or any governmental or regulatory organisation) without the prior written consent of the ORE Catapult (such consent not to be unreasonably withheld or delayed).

# THE BUYER’S LOGO

## The Seller shall not use the ORE Catapult's logo or disclose any details of any relationship with the ORE Catapult to any other party without the prior written consent of the ORE Catapult.

# GOVERNING LAW

## The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).