NIBE

Terms & Conditions

1. INTERPRETATION

1.1In these Terms the following definitions apply:

"**Buyer**" means the person, firm or company who purchases the Goods and/or Services from NIBE or whose order for the Goods and/or Services is accepted by NIBE.

"**NIBE"** means NIBE Energy Systems Limited (registered number: 5764775) whose registered office address Unit 3c, Broom Business Park, Bridge Way, Chesterfield S41 9QG.

"**Conditions**" means the terms and conditions set out in this document and includes any special terms and conditions ("**Special Terms**") agreed in writing between the Buyer and NIBE

"Contract" means any contract between NIBE and the Buyer for the sale and purchase of the Goods and/or Services, incorporating these conditions.

"**Delivery Point**" means the place where delivery of the Goods and/or Services is to take place under condition 4. Goods: any goods agreed in the Contract to be supplied to the Buyer by NIBE (including any part or parts of them).

"**Services**" means any services agreed in the Contract to be supplied to the Buyer by NIBE.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and, in the plural, include the singular.

1.4 Condition headings do not affect the interpretation of these Conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3, and to the Warranty terms referenced at clause 9.2, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply exclusively to all NIBE's sales and any variation (or Special Terms) to these Conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in Writing and signed by a director of NIBE. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of NIBE which is not set out in the Contract.

2.4 Each order or acceptance of a quotation for Goods and/or Services by the Buyer from NIBE shall be deemed to be an offer by the Buyer to buy Goods and/or Services subject to these Conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by NIBE until an acknowledgement of order is issued by NIBE.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate and is responsible for giving NIBE any necessary information relating to the Goods and/or Services within a reasonably sufficient time to enable NIBE to perform the Contract in accordance with these Conditions.

2.7 Any quotation is given on the basis that no Contract shall come into existence until NIBE despatches an acknowledgement of order to the Buyer Any quotation is valid for a period of 30 days only from its date, provided that NIBE has not previously withdrawn it.

2.8 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by NIBE shall be subject to correction without any liability on the party of NIBE.

2.9 No order which has been accepted by NIBE may be cancelled by the Buyer, except with the agreement in writing of NIBE and on terms that the Buyer indemnifies NIBE in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by NIBE as a result of cancellation.

2.10 NIBE may cancel an order in the event that delivery is not scheduled within 30 days of the Goods being made available for delivery. If the Buyer wishes to re-order following such cancellation, NIBE will issue a new order reflecting prevailing prices as at the date of the new order

2.11 In the event that the Buyer has an excess of the Goods ordered and wishes to return such Goods, NIBE may, at its sole discretion, accept the return of those Goods provided they are of satisfactory quality and are current stock items. Any goods accepted for return shall be subject to a restocking fee of 35% of the original net invoice value of the Goods, with the Buyer receiving a credit for the balance.

2.12 All drawings, designs, specifications and other information provided by NIBE are confidential and all rights of copyright ownership and other intellectual property rights in respect of them shall remain vested in NIBE and shall not pass to the Buyer.

2.13 The Buyer warrants that it shall not sell, export or re-export, directly or indirectly, to Russia/Belarus or for use in Russia/Belarus, any Products provided by NIBE under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014 (as amended) or any other subsequent Council Regulation. The Buyer also agrees to take the measures necessary to prevent any of its business partners or customers from doing the same. In the event of a breach of this obligation, NIBE shall be entitled to claim compensation for any loss or damage suffered as a result of such violation and has the full right to suspend and/or terminate this Agreement (including any orders placed under this Agreement).

3. DESCRIPTION

3.1 The quantity and description of the Goods and/or Services shall be as set out in NIBE's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by NIBE and any descriptions or illustrations contained in NIBE's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract, and this is not a sale by sample.

3.3 NIBE may make any changes in the specification of the Goods and/or Services which are required to conform with any applicable statutory or regulatory requirements, or which do not materially affect their quality or performance.

4. DELIVERY AND PERFORMANCE

4.1 Unless otherwise agreed in writing by NIBE, delivery of the Goods and/or Services shall take place at the location set out in the Buyer's purchase order.

4.2 The Buyer shall take delivery of the Goods and/or Services within 30 days of NIBE giving it notice that the Goods and/or Services are ready for delivery.

4.3 The Buyer may not make any change to delivery dates, the Delivery Point, quantities or specifications for the Goods and/or Services which are requested by the Buyer within 72 hours of the scheduled Delivery.

4.4 Any dates specified by NIBE for delivery of the Goods and/or Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.5 Subject to the other provisions of these Conditions NIBE shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or Services (even if caused by NIBE's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 60 days.

4.6 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery and/or performance, or NIBE is unable to deliver the Goods and/or Services because the Buyer has not provided appropriate information, instructions, documents, licences or authorisations: (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by NIBE's negligence); (b) the Goods shall be deemed to have been delivered; and (c) NIBE may store the Goods until actual delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and/or (d) sell the Goods at the best price readily available and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

4.7. If redelivery is required for any reason set out in clause 4.6 above, additional delivery charges will be due and payable.

4.8 The Buyer shall unload the Goods at the Delivery Point.

4.9 NIBE may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.10 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.11 The Buyer must provide all equipment reasonably requested for the delivery of Services (if accepted) at the Buyer's premises and provide a safe working environment to NIBE's employees and/or authorised representatives.

5. NON-DELIVERY

5.1 Any liability of NIBE for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

NIBE

6. RISK/TITLE

6.1 The Goods are at the risk of the Buyer from the time of delivery or, if the Buyer fails to take delivery, the time when NIBE tendered delivery of the Goods. The Buyer should insure the Goods accordingly.

6.2 Ownership of the Goods shall not pass to the Buyer until NIBE 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 NIBE from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall: (a) hold the Goods on a fiduciary basis as NIBE's bailee; and (b) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods,

6.4 The Buyer's right to possession of the Goods shall terminate immediately if: (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between NIBE and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or (c) the Buyer encumbers or in any way charges any of the Goods.

6.5 NIBE shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from NIBE.

6.6 On termination of the Contract, howsoever caused, NIBE's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. PRICE

7.1 Subject to 7.2, unless otherwise agreed by NIBE in Writing, the price for the Goods and/or Services shall be the price set out in NIBE's acknowledgement of order.

7.2 NIBE reserves the right to alter the price as referred to in clause 7.1 in the following circumstances and provided that NIBE has notified the Buyer of such variation as soon as reasonably practicable beforehand: (a) actions taken by public or regulatory authorities; ; (b) changes in the rate of currency exchange between countries; (c) any increases in the costs of labour, materials or other costs of manufacture whether or not caused by circumstances beyond the control of NIBE and (d) subject to clause 4.3, any change in delivery dates, the Delivery Point, quantities or specifications for the Goods and/or Services which are requested by the Buyer, or any delay caused by the instructions of the Buyer or failure of the Buyer to give NIBE adequate instructions or information.

7.3 The price for the Goods and/or Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods and/or Services.

8. PAYMENT

8.1 Subject to condition 8.4, payment of the price for the Goods and/or Services is due thirty (30) days from the date of the Invoice. NIBE may invoice the Buyer at any time for the price of the Goods and/or Services or part of it and, without limitations, may invoice the Buyer in respect of any instalment of an order.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until NIBE has received cleared funds.

8.4 All payments payable to NIBE under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by NIBE to the Buyer.

8.6 Any payment made to NIBE by way of credit card will attract a non-refundable surcharge of 1% of the gross payment value.

8.7 If the Buyer fails to make any payment by the due date or NIBE has reasonable grounds for believing that the Buyer will not make any payment then, without prejudice to any other right or remedy available to NIBE, NIBE may cancel the Contract or suspend any further delivery to the Buyer.

8.8 If the Buyer fails to pay NIBE any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to NIBE on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. In any event, NIBE reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9. QUALITY

9.1 Where NIBE is not the manufacturer of the Goods, NIBE shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to NIBE. The warranty set out below does not extend to parts, materials or equipment not manufactured by NIBE, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to NIBE.

9.2 NIBE provides a warranty in respect of its Goods and Services which is subject to the separate NIBE Warranty Terms.

9.3 NIBE shall not be liable for a breach of warranty in condition 9.2: (a) unless the Buyer gives written notice of the defect to NIBE, and, if the defect is as a result of damage in transit, within 72 hours of delivery and (b) NIBE is given a reasonable opportunity after receiving the notice to examine the Goods.

9.4 Subject also to the NIBE Warranty Terms, NIBE shall not be liable for a breach of warranty if: (a) the Buyer makes any further use of such Goods after giving such notice; or (b) the defect arises because the

Buyer failed to follow NIBE's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice or otherwise misused the Goods; or (c) the Buyer alters or repairs such Goods without the written consent of NIBE; or (d) the defect arises due to fair wear and tear, the Buyer's wilful or accidental damage and/or negligence, abnormal working conditions; or

9.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall be notified in writing to NIBE within 72 hours of delivery. If delivery is not refused, and the Buyer does not notify NIBE accordingly, the Buyer may not reject the Goods and NIBE shall have no liability, and the Buyer shall pay the price as if the Goods had been delivered in accordance with the Contract.

9.6 Subject to the NIBE Warranty Terms and condition 9.3, condition 9.4 and condition 9.5 above, if any of the Goods do not conform with the warranty in condition 9.2 NIBE shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if NIBE so requests, the Buyer shall, at NIBE's expense, return the Goods or the part of such Goods which is defective to NIBE. In the case of Services, NIBE may re- supply the Services (or the part in question) free of charge or refund the price (or part of it).

9.7 If NIBE complies with condition 9.6 it shall have no further liability for a breach of warranty in respect of such Goods and/or Services.

9.8 Any Goods replaced shall belong to NIBE and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the warranty period.

10. LIMITATION OF LIABILITY

10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of NIBE (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of: (a) any breach of these conditions; (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 Subject as expressly provided in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. Without limitation, NIBE does not warrant the accuracy or otherwise of any design, drawing, specification, instruction, other information or advice that it provides as part of the Services and/or as ancillary information in connection with the Goods.

10.3 Nothing in these conditions excludes or limits the liability of NIBE: (a) for death or personal injury caused by NIBE's negligence; or (b) under section 2(3), Consumer Protection Act 1987; or (c) for any matter which it would be illegal for NIBE to exclude or attempt to exclude its liability; or (d) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2, condition 10.3 and condition 12: (a) NIBE'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 net Contract price; and (b) NIBE shall not be liable to the Buyer for any loss of revenue, stoppage to other work, pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. ASSIGNMENT

11.1 NIBE may assign the Contract or any part of it to any person, firm or company.

11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of NIBE.

12. FORCE MAJEURE

NIBE shall not be liable for any breach of its obligations to the Buyer and reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) to the extent it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of NIBE including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to NIBE to terminate the Contract.

13. TERMINATION RIGHTS UPON INSOLVENCY OF THE BUYER

13.1 Without prejudice to any other right or remedy available to it, NIBE may cancel the Contract or suspend any further deliveries without any liability to the Buyer, if: (a) the Buyer is unable to pay its debts, makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or gets into liquidation; or (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or (c) the Buyer ceases, or threatens to cease, to carry on business; or (d) NIBE reasonably believes that any of the foregoing events is about to occur in relation to the Buyer and notifies the Buyer accordingly.

13.2 If the Goods and/or Services have been delivered but not paid for and NIBE terminates the Contract under condition 8.6 and/or condition 13 the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14. GENERAL

14.1 Each right or remedy of NIBE under the Contract is without prejudice to any other right or remedy of NIBE whether under the Contract or not.

14.2 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 to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by NIBE 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.

14.4 Any waiver by NIBE of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.5 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.

14.6 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.

15. COMMUNICATIONS

15.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or by email: (a) (in case of communications to NIBE) to its registered office or such changed address as shall be notified to the Buyer by NIBE; or (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to NIBE by the Buyer.

15.2 Communications 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 or (c) if sent by email on a working day prior to 4.00pm at the time of transmission and otherwise on the next working day.

15.3 Communications addressed to NIBE shall be headed with the NIBE contract number set out in the acknowledgement of order.

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