

TERMS OF BUSINESS 1st July 2022

These Terms and Conditions (**Conditions**) apply to all orders for the provision of Services that the Customer places with Orbital Gas Systems Limited (company number: 01868383) (**The Seller**) and sets out all the terms in relation to The Seller supplying Services to the Customer. By signing these Conditions, agreeing a Proposal and/or allowing The Seller to commence the Services, the Customer acknowledges and agrees that it shall be bound by these Conditions.

1. DEFINITIONS AND INTERPRETATION

In these Conditions:

- Contract** means any agreement between the Seller and the Customer, for the provision of Services incorporating these Conditions, the Proposal, the Specification and any Order Acknowledgment;
- Customer** means the person to whom the Seller is to provide the Services pursuant to a Contract, as detailed on the Proposal;
- Customer's Personnel** means any employees, agents, sub-contractors or consultants engaged by the Customer;
- Equipment** means the Customer's equipment and machinery as detailed on the Proposal in respect of which The Seller will provide the Maintenance Services;
- Goods** means any goods, parts, consumables, equipment or other deliverables to be supplied by The Seller to the Customer as part of the Services;
- Intellectual Property Rights** means patents, trade marks, service marks, registered designs, applications for any of those rights, trade and business names, unregistered trade marks and service marks, copyrights, know-how, rights in designs and inventions, rights in databases and any other rights of the same or similar effect or nature, in each case in any jurisdiction;
- Maintenance Services** means the maintenance services to be provided by The Seller in respect of the Equipment, as detailed on the Proposal;
- Order Acknowledgement** means an order acknowledgment submitted by The Seller acknowledging and accepting an order for the provision of Services;
- Project** means the Services to be provided by The Seller in respect of a particular project, as detailed in the Proposal;
- Proposal** means the description of the Services to be provided by The Seller which shall comprise the final and agreed proposal or quotation submitted by The Seller;
- Services** means the services which The Seller is to supply to the Customer as detailed in the Proposal and Specification, which may include a Project and/or Maintenance Services, and may also include the supply of Goods;
- Site** means the Customer's premises where the Services are to be carried out, as detailed in the Proposal;
- Specification** means the specification in respect of a Project (if applicable) which details the needs and requirements of the Customer in relation to that Project, as agreed between the parties and any further documents entered into between the parties detailing the Services;
- Seller's Personnel** means any employees, agents, sub-contractors or consultants engaged by The Seller to provide the Services; and
- VAT** means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994.

In these Conditions:

- 1.2. headings are for identification and indexing purposes only and they shall not affect the construction or interpretation of these Conditions;
- 1.2.1. words importing the singular meaning shall include the plural meaning and vice versa;
- 1.2.3. references to a **person** shall include natural persons, corporate or unincorporated bodies (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns and references to a **party** shall mean either The Seller or the Customer as the context requires and **parties** shall mean both of them; and
- 1.2.4. the word **including** will be construed without limitation unless inconsistent with the context and **working days** are all days other than Saturdays, Sundays or English public holidays.

2. APPLICATION

- 2.1. These Conditions alone shall govern and be incorporated in every Contract for the provision of Services made by or on behalf of The Seller. They shall apply in place of and prevail over any terms or conditions contained or referred to in any documentation submitted by the Customer, in correspondence or elsewhere, or implied by trade custom, practice or course of dealing. Any purchase order submitted by the Customer will not be deemed to have been accepted by The Seller unless and until The Seller issues an Order Acknowledgement.
- 2.2. Acceptance by the Customer of the provision of the Services shall be deemed to constitute unqualified acceptance of these Conditions.
- 2.3. A variation of these Conditions is valid only if it is in writing and signed by a director or authorised representative of The Seller.
- 2.4. Any specific terms agreed between the parties and set out in the Proposal shall prevail over the terms in these Conditions.
- 3. **PROVISION OF SERVICES**
- 3.1. The Services will begin on or around the date for provision of the Services as detailed in the Proposal, or such other date as agreed between the parties.
- 3.2. The Seller will provide the Services to the Customer in accordance with the Proposal, the Specification and the Order Acknowledgement. The Customer shall ensure that the terms of any applicable Proposal and Specification are complete, accurate and suitable for its own requirements.
- 3.3. Whilst The Seller will use reasonable endeavours to meet any dates or timescale set out in the Proposal or as agreed between the parties, such dates are approximate only, and time of performance is not of the essence of any Contract.
- 3.4. Any representations about the Services shall have no effect unless expressly agreed in writing and signed by a director or authorised representative of The Seller. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of The Seller which is not set out in the Contract.
- 3.5. The risk in any Goods shall pass to the Customer upon delivery to the Site. The title to the Goods shall not pass to the Customer until The Seller receives payment in full for the Goods and Services. If before title to Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 9.22, then, without limiting any other right or remedy it may have The Seller may require the Customer to deliver up all Goods in its possession and/or enter the Site or other premises where the Goods are stored in order to recover them.

4. CUSTOMER'S OBLIGATIONS

- 4.1. To enable The Seller to perform its obligations under the Contract, the Customer shall (and where applicable, shall procure that the Customer's Personnel shall):
- 4.1.1. co-operate fully with The Seller and provide The Seller and The Seller's Personnel with any information that it reasonably requires;
- 4.1.2. provide The Seller and The Seller's Personnel with access to the Equipment and the Site (including such facilities on Site as are reasonably required by The Seller and The Seller's Personnel);
- 4.1.3. provide The Seller and The Seller's Personnel with copies of any health and safety, security or other policies and procedures with which The Seller and The Seller's Personnel are required to comply with whilst on Site;
- 4.1.4. be fully responsible for the Customer's Personnel whilst on Site and shall ensure that the Customer's Personnel do not do anything which may delay or prevent The Seller from carrying out the Services;
- 4.1.5. obtain all necessary licences, permissions and consents which may be required before commencement of the Services;
- 4.1.6. keep all Equipment and other The Seller property at the Site safely and at its own risk; and
- 4.1.7. notify The Seller as soon as possible in respect of any issues which may prevent or cause a delay to The Seller's performance of the Services.
- 4.2. If The Seller's performance of the Services or its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's Personnel (including any breach of its obligations under this Condition 4, any delay in granting access to the Site or Equipment, any failure to have met all of its preparation obligations or any delay to the timetable of a Project not caused by The Seller) The Seller shall not be liable for any costs, charges, losses or other liability sustained or incurred by the Customer arising directly or indirectly from such prevention or delay, and The Seller shall be entitled to recover from the Customer any costs or expenses of whatever nature incurred by The Seller as a result of any prevention or delay.
- 4.3. the Customer shall before the handling, process or otherwise use the goods verify that all markings and descriptions on containers or packages are in accordance with the markings or descriptions specified by the Seller in this contract or in any documents delivered to the Buyers and the Buyers shall not be entitled to make any claim whatsoever or howsoever arising from the handling, processing or use of any container or package the markings of which are not in accordance with the contractual or documentary markings or descriptions but shall fully indemnify the Sellers in respect of all third party claims of this nature.
- 4.4. The Customer shall indemnify the Seller against loss or damage to Seller's cylinders or equipment (which are rented or loaned to Customer) while such equipment's are in the possession or control of the Customer.

5. CHANGES TO THE SERVICES

- 5.1. During the provision of the Services The Seller may recommend and/or the Customer may request changes or additions to the Services. In these circumstances, any changes or additions to the Services will be agreed in writing between the parties, such agreement not to be unreasonably withheld or delayed. The Seller shall advise the Customer of any change to the price and the timescale for the provision of the Services that apply to such changed or additional Services, and any other terms and conditions particular to the provision of such changed or additional Services. If these are agreed, the additional services shall be deemed to be included in the definition of Services and provided in all other respects on these Conditions.
- 5.2. The Seller may make any changes to the Services from time to time: (i) needed to comply with applicable law or safety requirements; and/or (ii) which do not materially affect the nature or quality of the Services.

6. PRICE AND PAYMENT TERMS

- 6.1. The price for the provision of Services shall be the price set out in the Proposal or Order Acknowledgement and shall be subject to adjustment in accordance with Condition 5 (**Price**). Unless otherwise specified, VAT and any other tax, duty or levy shall be payable by the Customer in addition to the Price.
- 6.2. The Seller shall be entitled to charge the Customer for any charges outside the Price stated on the Proposal, in respect of any: (i) Goods and/or services additional to those set out in the Proposal; (ii) Goods which are supplied as a result of the Maintenance Services (for example parts or consumables required to maintain the Equipment); and (iii) Services which have been based on assumptions set out in the Proposal, or otherwise agreed with the Customer, or based on information provided by the Customer (for example, the condition of the Equipment), which are not correct (**Additional Charges**). Additional Charges for Services will be based on The Seller's standard rates applicable at the time.
- 6.3. The Seller may at any time prior to the provision of the Services review, and if necessary adjust, its prices to take account of any increase or decrease to its costs in providing the Services or supplying the Goods. Where the Price includes the re-charge of Goods which The Seller sources from a third party supplier, the Customer shall bear the cost of any increase to the same between the date of the Proposal and the date when The Seller actually pays the third party for such Goods.
- 6.4. The Seller may revise its Price for Maintenance Services every 12 months or such other period as set out on the Proposal.
- 6.5. The Customer shall be liable for the travel, accommodation, sustenance and other reasonable expenses of The Seller's Personnel in the provision of the Services.
- 6.6. The Seller shall be entitled to invoice the Customer for all amounts due under the Contract on or at any time after it has commenced the Services or at such intervals as set out in the Proposal. Payment of the price for the Services and reimbursement of expenses shall be made in pounds sterling in full without deduction or set-off within 30 days of the date of The Seller's invoice or as otherwise set out in the Proposal. Time of payment is of the essence of a Contract. No payment shall be deemed to have been received until The Seller has received cleared funds.
- 6.7. In the event that the Customer fails to pay any amount due to The Seller by the due date for payment The Seller may: (a) suspend provision of the Services to the Customer; and/or (b) to claim interest at the rate of five per cent. (5%) above the base lending rate from time to time of The Bank of England accruing daily from the due date until receipt by The Seller of the full amount.

7. WARRANTY AND LIABILITY

- 7.1. The Seller warrants that the Services will be performed by appropriately qualified and experienced personnel with reasonable care and skill and in accordance with the Proposal provided that:
- 7.1.1. The Seller shall be under no liability in respect of any defective workmanship in any drawing, design, specification or materials supplied by the Customer or the Customer's Personnel;

- 7.1.2. The Seller shall be under no liability in respect of any defective workmanship arising from fair wear and tear, wilful damage or negligence caused by the Customer, Customer's Personnel, or persons using the Equipment, abnormal working conditions, incorrect storage, failure to follow The Seller's instructions (whether oral or in writing), failure to comply with the operating instructions of the Equipment, misuse or alteration or repair of the Equipment without The Seller's approval;
- 7.1.3. The Seller shall be under no liability if the defective workmanship is caused by the Customer's Personnel or if The Seller's Personnel were acting under the instructions of the Customer's Personnel;
- 7.1.4. The Seller shall be under no liability should the installation be delayed.
- 7.1.5. The Seller shall be under no liability if the total price of the Services has not been paid by the due date for payment;
- 7.1.6. The Customer notifies The Seller of any defect within five days of the provision of the Services or if the defect would not have been apparent on reasonable inspection, within five days of discovering the defect; or
- 7.1.7. the above warranty does not extend to defects in Goods not manufactured by The Seller which will be subject only to any applicable manufacturer's warranty.
- 7.2. The warranty set out in Condition 7.1 will be valid for the warranty period set out in the Proposal, or if no warranty period is set out in the Proposal for 12 months.
- 7.3. In the event of a valid claim by the Customer under Condition 7.1, The Seller shall investigate the claim and if liability is accepted by The Seller under Condition 7.1 the Customer's only remedy and The Seller's only obligation is (at The Seller's option) to re-perform the Services (or part thereof) free of charge or refund part of the Price, as applicable.
- 7.4. Subject to Conditions 7.5 to 7.7, The Seller's aggregate liability to the Customer under a Contract whether for negligence, breach of contract, breach of statutory duty, misrepresentation, restitution or otherwise shall in no circumstance exceed the Price of the Services to be provided under the relevant Contract.
- 7.5. All conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Goods (save for the conditions implied by Section 12 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982) are excluded from the Contract to the fullest extent permitted by law.
- 7.6. Nothing in these Conditions excludes or limits The Seller's liability: (i) for death or personal injury caused by The Seller's negligence; (ii) for fraud or fraudulent misrepresentation; or (iii) for any matter which it would be illegal for The Seller to exclude or attempt to exclude its liability.
- 7.7. Subject to Condition 7.6, The Seller is not liable for: (i) any indirect, special or consequential liabilities; (ii) any pure economic loss; (iii) any loss of anticipated profits, revenue or anticipated savings (iv) any loss of goodwill or reputation; or (v) any loss of management time, howsoever caused.
8. **FORCE MAJEURE**
If The Seller is prevented, hindered or delayed from or in providing the Services in accordance with these Conditions by an event which is beyond The Seller's reasonable control including acts of terrorism, insurrection, riots, civil unrest and military action, the exercise of emergency powers by any local, regional or national governmental authority, fire, flood, earthquake, storm and other natural disasters, industrial action, epidemics and pandemics, strikes and lock-outs, blockage or embargo or the failure or delay of supplies of power, fuel, transport, equipment, telecommunications systems, Internet or other goods and/or services (including any third party materials) (a **Force Majeure Event**) The Seller may, at its option: (a) suspend the provision of the Services while the Force Majeure Event continues; (b) if The Seller has insufficient capacity and/or resources to meet its commitments, apportion available capacity and/or resources between its customers as it decides; or (c) terminate any Contract so affected with immediate effect by written notice to the Customer, and The Seller will not be liable for any loss or damage suffered by the Customer as a result.
9. **TERM AND TERMINATION**
9.1. The Contract shall continue (unless terminated earlier in accordance with Condition 8 or 9.2):
9.1.1. in respect of any Project, until completion of the Project; and
9.1.2. in respect of Maintenance Services, for the initial period set out in the Proposal, or if no initial period is set out in the Proposal, for a period of 12 months, and shall continue thereafter under either party gives to the other no less than three months' notice, such notice to expire no earlier than the end of the initial period.
- 9.2. The Seller may terminate a Contract with immediate effect by notice to the Customer if the Customer:
9.2.1. is in material breach of an obligation under a Contract (including any failure to pay any sum by the due date) and, if the breach is capable of remedy, the Customer has failed to remedy such breach within a period of 10 days after being given notice by The Seller to remedy the breach; and
9.2.2. is unable to pay its debts when they fall due, ceases or threatens to cease to carry on business, suffers any event which could be reasonably considered to indicate that it is insolvent or may become so including, insolvent liquidation, declaration of bankruptcy, presentation of a bankruptcy or a winding up petition, appointment of or notice of intent to appoint an administrator, receiver or similar over any of its assets or undertaking, or the Customer suffers any analogous event in any jurisdiction in which it is incorporated or resident.
- 9.3. Upon the expiry or termination of this Agreement for any reason:
9.3.1. The Seller shall be entitled to invoice the Customer for any Services provided (including any work in progress and Goods delivered to the Customer or ordered by The Seller for supply to the Customer) as at the date of termination or expiry and the Customer shall pay such invoices and any other outstanding invoice within 10 days of the date of expiry or termination;
9.3.2. The Seller shall be entitled to access the Site to remove any of its plant, equipment or other property on the site and shall be entitled to seize any Goods for which it has not received payment; and
9.3.3. each party shall within five working days from receipt of a request by the other party return to the other party all original and copy documentation containing Confidential Information of the other party.
- 9.4. Termination of this Agreement shall be without prejudice to the accrued rights and liabilities of the parties and shall not affect any continuing obligations of the parties under this Agreement. Without prejudice to that generality, the provisions of Conditions 6, 7, 10, 11, 12, 13 and 14 shall survive the termination of this Agreement for any reason, or the expiry of this Agreement.
10. **CONFIDENTIAL INFORMATION**
Each party (the **Receiving Party**) shall treat any Confidential Information relating to the other party (the **Disclosing Party**) as strictly confidential except to the extent that such Confidential Information can be proved to be within the public domain at the time of disclosure other than as a result of any breach of these Conditions. The Receiving Party shall not disclose such Confidential Information to any third party nor use it for any purpose except as is strictly necessary for the performance of its obligations under the Contract. For the purpose of these Conditions, **Confidential Information** means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by the Disclosing Party
- to the Receiving Party or otherwise acquired by the Receiving Party in connection with these Conditions or its subject matter whether before or after the commencement of the Contract including information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, know-how, trade secrets and other Intellectual Property Rights, market opportunities, business affairs, financial information and other confidential information.
11. **INTELLECTUAL PROPERTY RIGHTS**
11.1. All right, title and interest in and to any Intellectual Property Rights created by or on behalf of The Seller during the provision of the Services and all renewals and extensions thereof shall be the property of and vest in The Seller (unless otherwise agreed in writing), and the Customer assigns, including by way of present assignment of future rights, such Intellectual Property Rights to The Seller with full title guarantee and free from all encumbrances and other rights of whatever nature exercisable by any third party, together with the right to take action for any past, present and future damages and other remedies in respect of any infringement or alleged infringement of such Intellectual Property Rights. The Customer waives any moral rights in relation to the Intellectual Property Rights.
11.2. All right, title and interest in and to any Intellectual Property Rights owned by or licensed to a party prior to the Contract is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom it's right to use such Intellectual Property Rights has derived).
12. **NOTICES**
A notice under or in connection with a Contract shall be in writing and shall be delivered personally or sent by recorded or registered delivery post or sent by facsimile transmission to the other party at its last known address or facsimile number. In the absence of evidence of earlier receipt, service of a notice is deemed to have been effected: (a) if delivered personally, when left at the address referred to in this Condition 12; (b) if sent by Special Delivery 9.00am next day post, by 9.00 am the next day; (c) if sent by pre-paid first class post or 24 Signed For, on the second working day after posting it; or (d) if sent by email at the time of its transmission or if the time of transmission is outside 9.00am on a working day, at 9.00 am on the next working day, provided that where notice is sent by email, a copy of the notice must be served on the same day or the next working day in accordance with one of the methods in (a) to (c).
13. **NON-SOLICITATION**
The Customer shall not, without the prior written consent of The Seller, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services, solicit or entice away from The Seller or employ (or attempt to employ) any person who is, or has been, engaged as part of The Seller's Personnel.
14. **GENERAL**
14.1. The Seller may at its discretion sub-contract any of its obligations under this Agreement to any member of its Group without the need to consult with or obtain approval from the Customer (and for the purposes of this Condition "Group" shall mean The Seller's parent undertakings and each of its subsidiary undertakings and each of its parent undertakings' subsidiary undertakings from time to time (and for the purposes of this definition "parent undertaking" and "subsidiary undertaking" shall take the meanings set out in section 1162 of the Companies Act 2006)).
14.2. Unless otherwise stated in these Conditions, a Contract (and any documents referred to in it) constitutes the entire understanding between the parties in relation to its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of the Contract. No party has relied on any warranty or representation except as expressly set out in the Contract.
14.3. The Customer may not assign or transfer or purport to assign or transfer any of its rights or obligations under a Contract without first having obtained The Seller's written consent. The Seller may assign a Contract or any part of it to any person.
14.4. If any Condition of a Contract, (or part of a Condition), is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other Conditions shall remain in force.
14.5. If any invalid, unenforceable or illegal Condition of a Contract would be valid, enforceable or legal if some part of it were deleted, the Condition shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
14.6. Nothing in a Contract is intended to confer on any person any right to enforce any Condition of a Contract which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
14.7. The failure by The Seller to exercise or delay by The Seller in exercising any right, power or remedy provided by a Contract or by law does not constitute a waiver of such right, power or remedy or a waiver of any other rights, powers or remedies. No single or partial exercise of a right, power or remedy provided by a Contract shall prevent any further exercise of the right, power or remedy or the exercise of another right, power or remedy.
14.8. Each right or remedy of The Seller under a Contract is without prejudice to any other right or remedy of The Seller whether under the Contract or not.
A Contract is governed by, and shall be construed in accordance with, the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with a Contract.