

GENERAL TERMS AND CONDITIONS FOR SALE OF PRODUCTS OR PROVISION OF SERVICES

These Terms and Conditions apply to all Quotations and Contracts for Sale of Products or Provision of Services provided by or entered into by James Fisher Nuclear Limited or any subsidiary or related company .

A1. Definitions

In these Terms and Conditions:

“**Company**” means James Fisher Nuclear Limited and any subsidiary or related company.

“**Company’s Address**” means Golden Hill Centre, School Lane, Leyland, Lancashire, PR25 2TU or the usual place of business of any subsidiary or related company of the Company as detailed on the Purchase Order .

“**Customer**” means any person, firm, company, partnership, competent authority or other business entity who agrees to purchase Products or obtain Services from the Company under the Contract.

“**Contract**” means the agreement between the Company and the Customer for any form of business conducted by or with the Company, incorporating these Terms and Conditions.

“**Delivery Address**” means the address for delivery of Products or Services which shall be the Company’s Address or such other address as may be agreed in Writing, or appears on the purchase order.

“**Product(s)**” means any goods, designs, documentation, software, materials, equipment, machinery, products or articles of whatsoever nature, which the Company is to supply, sell to the Customer.

“**Services**” means any services or work provided by the Company to the Customer under the Contract including but not limited to the provision of any consultancy , advisory services, or the design and supply of special purpose equipment and solutions.

“**Estimated Delivery Date**” means the date on which the Company estimates that Products or Services will be delivered.

“**Hire Period**” means the period from the time the Product is despatched by the Company to the Customer or collected by the Customer or its agents from the Company’s Address until the time the Product is received back at the Company’s Address or other such address as may be agreed in Writing.

“**Losses**” includes all actions, claims, demands, proceedings, damages, awards, payments, losses, costs, expenses, penalties, fines, compensation or other liabilities (direct, indirect, consequential or otherwise including loss of profit, business, turnover or market share), legal or professional expenses and interest thereon.

“**Price**” means the charge made by the Company for the provision of Services, sale of Products as further defined in the Contract and or purchase order.

“**Quotation**” means the Company’s quotation for the provision of Products or provision of Services, which term includes any document issued by the Company indicating the terms on which Products or provision of Services are to be provided.

“**Terms and Conditions**” means the Terms and Conditions set out in this document and any other terms and conditions agreed pursuant to clause A2.2.

“**Writing**” means any form of written communication including transmission by facsimile. It shall also include electronic mail (“Email”) where the parties have agreed either expressly or by a course of dealing to communicate by Email and have provided each other with correct Email addresses accordingly, save that any Email shall take effect only when received by the recipient.

A2. Application

A2.1 All business conducted by the Company with the Customer, including any contracts, quotations or pre-contractual negotiations, shall be subject to these Terms and Conditions to the exclusion of any and all other terms and conditions unless otherwise agreed in Writing.

A2.2 No variation or addition to these Terms and Conditions shall be binding unless agreed in Writing by the Company. Any and all statements, representations, advice or recommendations made or given by the Company during negotiations prior to the conclusion of a Contract are not binding unless incorporated into the Contract in Writing signed by both parties.

A2.3 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

A2.4 If any provision of these Terms and Conditions is held by any competent court, tribunal or authority to be invalid or unenforceable in whole or in part the validity of the remainder of the provision and all other remaining provisions of these Terms and Conditions shall not be affected thereby.

A3. Description of Contract

A3.1 No Contract shall be formed until the Company confirms in Writing its acceptance of the offer of business to be conducted with the Customer.

A3.2 The Company will sell, and/or provide Products and/or Services and the Customer will pay the specified Price, in accordance with the Company’s acceptance in A3.1 above.

A4 Performance of Contract

A4.1 Unless otherwise agreed in Writing, the place of performance of the Contract, including any delivery of Products or Services, shall be the Company’s Address. Unless otherwise agreed in Writing, it is the Customer’s obligation and risk to take delivery of any Product the subject of the Contract from the Company’s Address.

A4.2 Where the Company agrees to sell or provides Services to the Customer, the Company will use all reasonable effort to deliver any Product or Service by the Estimated Delivery Date. However, any dates specified by the Company for delivery of the Products or Services are intended to be an estimate only and if no dates are so specified, delivery will be within a reasonable time.

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- A4.3 Unless otherwise agreed, the Customer will take delivery of the Products or Services within seven (7) days from receipt of notice in Writing from the Company to do so. If the Customer fails to take delivery of the Products or Services within seven (7) days (or any other period agreed pursuant to this clause) from receipt of notice in Writing from the Company then, without prejudice to any other right or remedy available to the Company, the Company may:
- A4.3.1 issue its invoice in respect of the Products or Services as if they had been delivered;
 - A4.3.2 store the Products until actual delivery is made and charge the Customer for the costs of storage;
- A4.4 The Products are at the risk of the Customer from the time of delivery and the Customer shall insure the Products accordingly.
- A4.5 Notwithstanding clause A4.4, where the Company agrees to sell Products to the Customer, property in the Products shall not pass to the Customer until the Company has received payment of the Price in full (in cash or cleared funds), including any additional sums which become due from the Customer under the Contract. The Customer hereby agrees to and grants the Company a continuing security interest in any and all such Products together with all accessions, attachments, substitutions and amalgamations thereto, and any proceeds or products derived from the sale thereof. Without prejudice to any other rights and remedies available to the Company under the Contract or in law, in the event of any breach of Contract by the Customer, the Company shall have the full right and entitlement without further notice to the Customer to take possession of all or any part of the Products and to sell the same in a commercial manner in accordance with applicable law and to apply the proceeds of such sale against any Losses suffered by the Company. The Customer hereby agrees to do all that is necessary by law to give effect to such security.
- A4.6 Where the services require the use of the Customers products at the Company's Address or that of its sub contractors, the risk and legal title in their products strictly remains with the Customer at all times inclusive of whilst at the Company Address and the transportation to and from that site.
- A4.7 The Company reserves the right to sub contract any part of its obligations to a suitably qualified third party chosen by the company.
- A5. Price**
- A5.1 The Price for the provision of Products or Services shall be that agreed between the parties and confirmed in Writing by the Company.
- A5.2 All prices quoted by the Company in its Quotations are valid for thirty (30) days only. The Company reserves the right to amend any typographical, clerical or other error or omission on any documentation containing pricing information issued by or on behalf of the Company, and the Company shall have no liability to the Customer for any such errors or omissions.
- A5.3 Unless otherwise specified, the Price for any Products or Services provided by the Company to the Customer shall be exclusive of any travel, accommodation, subsistence or other out-of-pocket expenses of the Company's employees, servants or agents (which where applicable the Customer shall pay to the Company at cost plus handling charge) and shall exclude any costs, charges relating to storage, loading, carriage, unloading, delivery and insurance of any Products or any contamination clean up costs resulting from the Customers products or any applicable duties or taxes or additional costs of such nature, which shall remain the liability of the Customer.
- A5.4 Where applicable the Company is obliged to charge in addition to the Price any value added tax in the United Kingdom.
- A6. Invoicing and Payment**
- A6.1 The Company will issue to the Customer an invoice or invoices for the Price of any Products or Services with any additional costs and/or charges payable by the Customer in line with an agreed payment plan contained within the contract or purchase order.
- A6.2 Unless otherwise agreed in Writing, payment of any invoice submitted by the Company to the Customer is due within thirty (30) days of the date of the invoice and payment within this time shall be of the essence of the Contract.
- A6.3 Receipts for payment of any invoice will only be issued upon request in Writing by the Customer.
- A6.4 If the Customer fails to make any payment of any invoice within due time then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- A6.4.1 cancel the Contract, and require immediate return at the Customer's expense of any Products;
 - A6.4.2 suspend further performance by the Company under the Contract;
 - A6.4.3 charge the Customer interest on any unpaid amount from the date payment is due to the date payment in full is made on a daily basis at the per annum rate of 2% above the base bank rate from time to time of HSBC Bank PLC;
 - A6.4.4 be reimbursed by the Customer for all losses incurred by the Company in the collection of any overdue amount.
- A7 Warranties**
- A7.1 Subject to the conditions set out below the Company warrants that the Products or Services will correspond with their specification at the time of delivery and for Products will be free from defects in material and workmanship for a period of twelve (12) months from the date of delivery to the delivery address.
- A7.2 The above warranty is given by the Company subject to the following conditions:
- A7.2.1 the Company shall be under no liability in respect of any defect in the Products or Services arising from any drawing, design or specification supplied by the Customer;
 - A7.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's written instructions, misuse or alteration or repair of the Products without the Company's approval;

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- A7.2.3 the Company shall have the right under sub clause 7.2.2 to charge the Customer for costs incurred in analysing and rectifying the defect;
- A7.2.4 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment;
- A7.2.5 Software Warranty period runs for six (6) months from the date of installation onto the product or nine (9) months from delivery to the Customers site which ever is the sooner;
- A7.2.6 Spare Parts Warranty period runs for three (3) months from the date of delivery to the Customers site;
- A7.2.7 In the event products or services are supplied by the Companies subcontractor then the subcontractor available warranty will be passed to the Customer.

Any claim by Customer which is based on any defect in the quality or condition of the Products or Services or their failure to correspond with specification (whether or not delivery is refused by the Customer) or any shipping damage shall be notified to the Company within seven days from the date of delivery.

Where any valid claim in respect of any of the Products or Services which is based on any defect in the quality or condition of the Products or the failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to repair or replace the Products (or the part in question) free of charge and the Company shall have no further liability to the Customer.

- A7.3 The Customer is responsible for ensuring provision of agreed facilities as detailed in the specification or our quotation. The Customer will be liable for lost time charges if delays are caused due to the agreed provisions not being in place.
- A7.4 The Customer warrants that Products purchased from the Company or their own products will be free from Radioactive Contamination if/when the Products or their own products are required to be removed from the Customers premises for repair or return and whilst at the Company's address.

A8. Limitation of Liability and Indemnity

- A8.1 The Company's liability to the Customer under the Contract for any loss or damage howsoever and whatsoever arising including any loss or damage arising from negligence and/or any act or omission of any person employed, hired or engaged by the Company shall not exceed the Price of the Contract.
- A8.2 The Company shall not in any event be liable to the Customer for any consequential and/or indirect loss or damage whether for loss of profit or otherwise, costs, expenses or other claims for consequential compensation whatsoever and whether caused by the negligence of the Company its employees, servants, agents or otherwise.
- A8.3 Unless otherwise agreed in Writing, the Customer shall fully indemnify the Company against any loss, damage or injury howsoever caused (including by negligence) to the Customer's employees, servants or agents and/or property of the Customer's employees, servants or agents during the execution of the Contract.
- A8.4 Nothing in these Terms and Conditions excludes or limits the Company's liability for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- A8.5 Where the Company agrees to sell Products to the Customer, the Company will not be liable for any Losses caused directly or indirectly by any delay in the delivery of the Products (even if caused by the negligence of the Company, its employees, servants or agents), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds thirty (30) days.
- A8.6 Where the Company agrees to provide a Service to the Customer, the Company will not be liable for any Losses caused directly or indirectly by any delay in the provision of the Service (even if caused by the negligence of the Company, its employees, servants or agents). Unless otherwise agreed, the Customer shall not be entitled to cancel the Contract solely because of such delay.

A9. Termination

- A9.1 The Company shall be entitled to terminate the Contract forthwith by notice in Writing to the Customer if:
 - A9.1.1 the Customer commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within seven (7) days of receipt of notice in Writing of the breach requiring remedy of the same; or
 - A9.1.2 the Customer 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 goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or
 - A9.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
 - A9.1.4 the Customer ceases or threatens to cease to carry on business; or
 - A9.1.5 where the Customer is resident in a jurisdiction other than England and Wales, an event similar to any of those specified in clauses A9.1.2 and A9.1.3 occurs to or in relation to the Customer.
- A9.2 In the event of termination by the Company pursuant to clause A9.1 above then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries or Services due under it without any liability to the Customer and, if the Services have already been provided, Products delivered but not paid for, the price of the Services, Products shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Company shall be entitled to charge interest at the per annum rate of 2% above the base bank rate from time to time of HSBC Bank PLC from the time of such cancellation or suspension until the Company receives payment.

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A9.3 The Customer shall be entitled to terminate the Contract by giving thirty (30) days notice in Writing of termination to the Company. In the event of termination by the Customer pursuant to this clause, the Company shall invoice the Customer and the Customer shall immediately pay to the Company the full Price together with any additional costs and/or charges payable by the Customer under clause A4.

A10. Laws and Regulations

A10.1 The Customer shall comply with all laws and regulations relating to the ownership and use of the Products or Equipment including health and safety requirements.

A10.2 The Customer shall ensure that all appropriate safety information (whether or not supplied by the Company) is distributed and drawn to the attention of its employees and all others who require it for the safe handling or use of the Products or Equipment.

A10.3 The Customer shall indemnify the Company for any and all Losses suffered by the Company attributable to a breach of this Clause A10.

A11. Resources

A11.1 The Customer hereby agrees that, during the term of the Contract and for a period of twelve (12) months after expiry or termination howsoever caused, he will not solicit the Company's staff who are known by the Customer to have been employed or engaged in the performance of the Contract. For the purposes of this clause, 'solicit' means a direct or indirect attempt to induce such person to take an engagement with such party as an employee, director, sub-contractor or independent contractor provided that this clause shall not apply to any engagement as a result of a general advertisement or recruitment campaign.

A12. Confidentiality

A12.1 All techniques, processes, inventions, equipment, drawings, designs, specifications, proposals and such information concerning the Services, Products relating to the Company's business of which the Customer shall obtain knowledge or information (except to the extent that they are within or fall into the public domain other than by breach of the Contract) shall remain both during and after the completion of the business conducted under the Contract the absolute and exclusive property of the Company and the Customer shall keep confidential and retain the same with the utmost secrecy and shall use its utmost endeavours to ensure that all its employees, servants and agents shall abide by the terms of this provision as though it were binding upon each of them and the Customer shall not use same for its own purposes, nor shall it cause or permit anything which may damage or endanger the intellectual property of the Company or allow or assist others to do so.

A13. Waiver

A13.1 No payment accepted by the Company and no neglect, delay or indulgence on the part of the Company in enforcing the Contract or any of the Terms and Conditions thereof shall operate as a waiver of the Company's rights thereunder, unless in each case the Company expressly so agrees in Writing.

A14. Force Majeure

A14.1 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations if the delay or failure was due to any cause beyond the Company's reasonable control including (without limitation):

A14.1.1 act of God, storm, flood, tempest or other weather conditions, explosion, fire or accident;

A14.1.2 war or threat of war, civil war, hostilities, sabotage, insurrection, riot or civil disturbance, or requisition;

A14.1.3 Governmental or local authority acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind;

A14.1.4 import or export regulations or embargoes;

A14.1.5 strikes, lock-outs or other industrial actions or trade disputes whether involving employees of the Company or of a third party;

A14.1.6 difficulties in obtaining raw materials, labour, fuel, parts, equipment, machinery or other essential supplies;

A14.1.7 failure or breakdown in equipment or machinery from power failure or other external causes.

A15. Cross Claims and Set Off

A15.1 The Customer hereby waives any right to set-off under the Contract or otherwise and agrees to pay all sums due regardless of any equity, set-off or cross claim on the part of the Customer against the Company.

A16. Computer Software

If the Company supplies to or makes available for use by the Customer any computer software programme and associated documentation, the Company does so on the following terms:

A16.1 The Customer is granted a non-exclusive licence to use such computer software programmes and any associated documentation.

A16.2 All copyright trademarks and other intellectual property rights remain the exclusive property of the Company.

A16.3 The Customer shall not copy the whole or any part of any such computer software programme or associated documentation or modify or combine the whole or any part of the same with any other software or documentation.

A16.4 The Customer shall not assign, transfer, lease, sell, or otherwise trade in or encumber the computer software programme nor use on behalf of or make available the same to any third party.



A17. Notices

A17.1 Any notice required to be given by either party under the Contract shall be done so in Writing and delivered or sent by pre-paid first class recorded delivery letter, facsimile or email addressed to the registered office of the party to be served or to such other place as may be designated by the party for the purpose of service and shall be deemed to have been served in the case of a notice delivered by hand, when delivered, in the case of a letter, forty-eight (48) hours after the time of posting, in the case of facsimile when despatched.

A18. Non-Assignment

A18.1 The Customer shall not assign, transfer or sub-contract the Contract or any benefit, interest, right or obligation under the Contract, without the prior agreement of the Company in Writing.

A19. Governing Law and Jurisdiction

A19.1 The Contract shall be governed by and construed in accordance with the laws of England.

A19.2 The Customer hereby agrees for the benefit of the Company that any claims, disputes, legal actions, suits or proceedings it may have against the Company arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the English Courts. In addition the Customer hereby agrees that the Company shall have the right to bring any claims, disputes, legal actions, suits or proceedings it may have against the Customer in the courts of any jurisdiction where the Customer or any of its property or assets may be found or located, and the Customer hereby irrevocably submits to the jurisdiction of any such court.