

Bowman - Standard terms and conditions - 20.10.21 Standard terms and conditions

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Bowman Power Group Ltd
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1 BASIS OF SUPPLY

1.1 Bowman Power Group Limited (**Bowman**) is a supplier of turbo generator systems and related products and services and is willing to supply its clients (**Clients**) such products (**Equipment**) and services (Services) as a Client may wish to purchase subject to a Contract (as defined below).

1.2 Any Proposal for Equipment and/or Services given by Bowman on the Client's request is only valid for the period specified on the Proposal, and where no such period is specified then, for a period of 30 business days from its date of issue.

1.3 For the avoidance of doubt, a Proposal shall not constitute an offer.

1.4 Any order for Equipment and/or Services received by Bowman on behalf of a Client (whether in relation to a Proposal or not) (**Order**) shall constitute an offer by the Client to purchase the Equipment and/or Services (as applicable) in accordance with these standard terms and conditions (**Terms**).

1.5 The Order shall only be deemed to be accepted by Bowman when Bowman issues written acceptance of the Order, at which point and on which date a contract (**Contract**) shall come into existence on these Terms, which are incorporated into and form part of the Contract, save where any provision of these Terms is explicitly varied or excluded in writing signed for and on behalf of Bowman, in which case that Term and only that Term shall be varied or excluded accordingly.

1.6 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Bowman which is not set out in the Order or these Terms.

1.7 These Terms shall apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.8 If there is any discrepancy within a Contract between the other terms of the Contract and these Terms, these Terms shall prevail unless expressly stated otherwise in the Contract.

2 SUPPLY OF EQUIPMENT AND SERVICES

2.1 Subject to a Contract and clauses 2.2 and 2.3 below, Bowman hereby agrees to supply to the Client the Equipment and/or Services set out in the Order in accordance with any technical specification referred to in the Proposal (Technical Specification).

2.2 For the avoidance of doubt, all drawings, descriptions, weights and dimensions submitted with the Proposal and any descriptions and illustrations contained in our catalogues, price lists and other advertising materials are approximate only unless stated otherwise and are intended merely to represent a general idea of the products described therein.

2.3 Bowman may, on prior notice to the Client, make changes to the Equipment or Technical Specification, provided such changes do not have a material adverse effect on the performance of the Equipment. Further whilst every precaution is taken to ensure the accuracy of the weights and dimensions shown on the delivery notes or Technical Specification, such figures must be taken as subject to a margin of ten (10) per cent.

2.4 The Equipment supplied to the Client by Bowman under an Order shall on delivery:

2.4.1 (subject to clause 2.3 above) conform to the Technical Specification;

2.4.2 comply with all applicable statutory and regulatory requirements unless stated otherwise within our Proposal

2.5 Bowman shall perform the Services with reasonable skill and care and in compliance with all applicable laws and in accordance with the Technical Specification.

2.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

3 DELIVERY

3.1 Where appropriate Bowman may deliver Orders by instalments which may be invoiced and paid for separately (Instalments). References in the Contract to Orders shall, where applicable, be read as references to Instalments.

3.2 Bowman shall deliver each Order Ex-Works (INCOTERMS® 2020) from its factory in Southampton, UK and shall use reasonable endeavours to deliver each Order by the anticipated delivery date notified to the Client at the date of the Contract. However such dates shall be estimates only and time shall not be of the essence for delivery of the Equipment.

3.3 Bowman shall promptly notify the Client of any circumstance that may materially delay or otherwise affect Bowman's ability to supply the Equipment or the Services.

3.4 Bowman shall ensure that the Equipment is properly packed in such manner as to enable it to reach their destination in good condition using land-based transportation handling procedures generally accepted in the industry. Seafreight and Airfreight packaging is available on request.

3.5 Delivery of an Order shall be completed on notification by Bowman that the order is ready for collection.

3.6 Bowman shall not be liable for any failure or delay in delivering an Order and any delays in the Delivery of an Order beyond the anticipated delivery date shall not entitle the Client to refuse to take delivery of the Order or claim damages.

3.7 Any delay in the Client picking up the Equipment shall not mean that the Client is entitled to delay payment for the Equipment. Any delay in the Client picking up the Equipment may also incur storage charges which Bowman shall be entitled to charge the Client for in addition.

3.8 Bowman shall perform the Services at the location specified in the Order. If Bowman is required to perform the Services at the Client's site, the Client shall ensure that the site is ready on time, that it is safe and that it provides Bowman with an environment that is suitable for to enable Bowman to perform the Services in question.

4 WARRANTY AND DEFECTIVE EQUIPMENT

4.1 Bowman warrants that the Equipment and the Services will be free from defects for a period of fifteen (15) months from delivery or twelve (12) months from date of installation of the Equipment in the Client's equipment (whichever is the lesser period from delivery).

4.2 Subject to the provisions of this clause 4, on delivery or at any time during the Warranty Period the Client may reject any Equipment delivered to it that does not comply with clause 2.4, or any Services that do not comply with clause 2.5, provided that:

4.2.1 the Equipment product registration form is properly and promptly returned to Bowman upon Delivery and a completed installation checklist is returned promptly when the Equipment is commissioned;

4.2.2 notice of rejection is given to Bowman:

a) in the case of a defect that is apparent on normal visual inspection, within five business days of Delivery;

b) in the case of a latent defect, within a reasonable time of the latent defect having become apparent;

4.2.3 the Equipment is properly installed and operated in accordance with the Equipment manuals; and

4.2.4 none of the events listed in clause 4.4 apply.

4.3 Failure to give notice of rejection in accordance with clause 4.2.2, shall mean that the Equipment and/or the Services are deemed to have been accepted.

4.4 Bowman shall not be liable for Equipment failing to comply with the warranties set out in clause 2.4 and clause 2.5 in any of the following events:

4.4.1 The Client makes any further use of such Equipment or the Services after giving notice in accordance with clause 4.2.2;

4.4.2 the defect arises because the Client failed to follow Bowman's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;

4.4.3 the Client alters or repairs such Equipment or Services without the written consent of Bowman;

4.4.4 the Client permits third parties to alter or repair such Equipment or Services;

4.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, improper handling or operating, alteration or repairs, abnormal storage or working conditions or damage caused by a Force Majeure Event.

4.5 If the Client makes a valid warranty claim in respect of the Equipment or Services under these Terms during the Warranty Period then Bowman shall in its sole discretion, to the extent permitted under applicable law, be entitled to either refund, repair or replace the rejected Equipment or refund or re-perform the rejected Services.

4.6 Bowman's warranty to make good any defective Equipment or Services or part thereof during the Warranty Period is subject to the following:

4.6.1 such defect is caused only by faulty materials or faulty workmanship;

4.6.2 the Equipment had been used properly;

4.6.3 the Equipment is promptly dismantled and returned to Bowman on discovery of the defect. Transportation costs shall be at Bowman's cost unless the Equipment is subsequently found not to be defective;

4.6.4 all repaired or replacement parts or equipment for the Equipment supplied by Bowman are supplied subject to Bowman not being liable for any delay or consequential damages and the Client shall be responsible for reassembly and recommissioning. Bowman shall bear the cost of returning the repaired or replacement Equipment;

4.6.5 Bowman warrants that the repaired or replacement parts or Services will be free from defects for a period of six (6) months from the date of Delivery or for the remainder of the Warranty Period for the original Equipment or Services (whichever is the longest time period); and

4.6.6 any defective Equipment or parts thereof not returned to the Client shall become the property of Bowman.

4.6.7 a completed installation checklist is returned when the repaired or replacement parts are commissioned.

4.7 Once Bowman has refunded, repaired or replaced the defective Equipment or refunded or re-performed the defective Services pursuant to clause 4.5 then it shall have no further liability to the Client in respect of the defective Equipment or Services (other than in respect of a further warranty claim brought within the period referred to in clause 4.6.5). ..

4.8 These Terms shall apply to any repaired or replacement Equipment supplied by Bowman.

5 PRICE AND PAYMENT

5.1 In consideration of Bowman delivering the Equipment and/or performing the Services, the Client shall pay the price set out in the Contract or where such price is not set out in the Contract, in accordance with Bowman's then standard equipment price list (as amended from time to time) or, in the case of Services, Bowman's standard day rates for the personnel performing the Services in GBP.

5.2 Bowman shall be entitled to invoice the Client for each Order on or at any time after delivery (or, in the case of Services, performance) or at such other time as may be specified in the Order. Each invoice shall quote any relevant order number.

5.3 Subject to clause 5.4 below, the Client shall pay invoices in full and in cleared funds within 14 calendar days of receipt of invoice. Payment shall be made to the bank account nominated in writing by Bowman.

5.4 Bowman reserves the right to require different payment terms (including payment in advance) depending on the credit and payment history of any Client and any such payment terms shall be set out in the Contract. Such alternative payment terms shall prevail over this clause 5.

5.5 If Bowman delivers any Equipment by Instalments, then any delay in the provision of such Instalment, or failure to deliver any further Instalment(s) shall not entitle the Client to reject the delivery of any other Instalment or to withhold payment in respect of any Instalment previously delivered.

5.6 All amounts payable under the Contract shall be exclusive of VAT, or any taxes or duties, which shall be paid at the rate and in the manner for the time being prescribed by law.

5.7 If the Client fails to pay any amount payable by it under the Contract, Bowman may charge the Client interest on the overdue amount, payable by the Client immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% a year above the base rate for the time being of Barclays Bank PLC. Such interest shall accrue on a daily basis and be compounded quarterly. Bowman may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and Late Payment of Commercial Debts Regulations 2002.

5.8 The Client may not withhold payment of any sum by reason of any set-off of any claim or dispute with Bowman whether relating to the quality or delivery of the Equipment or otherwise.

6 TITLE AND RISK

6.1 Risk in Equipment shall pass to the Client on delivery.

6.2 Title to Equipment shall not pass to the Client until Bowman has received payment in full (in cleared funds) for such Equipment.

6.3 Until title to Equipment has passed to the Client, the Client shall:

6.3.1 hold such Equipment on a fiduciary basis as Bowman's bailee;

6.3.2 maintain such Equipment in satisfactory condition and keep them insured on Bowman's behalf for their full price against all risks (including theft, accidental damage, loss or damage in transit and fire) with an insurer that is reasonably acceptable to Bowman.

6.3.3 but the Client may use the Equipment in the ordinary course of its business.

6.4 If before title to Equipment passes to the Client the Client becomes subject to any insolvency event, provided that such Equipment has not been resold and without limiting any other right or remedy Bowman may have, Bowman may at any time require the Client to deliver up such Equipment and, if the Client fails to do so promptly, enter any premises of the Client or of any third party where the relevant Equipment is stored in order to recover it.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 "Intellectual Property Rights" means intellectual property rights of any nature (whether registered or not) including patents, registered designs, trademarks, service marks, domain names, copyright, design rights, know-how, utility models and any applications for any of the foregoing, in each case subsisting in any part of the world.

7.2 All Intellectual Property Rights in or arising out of or in connection with the Equipment shall belong to Bowman or third party suppliers, and the Client shall have no rights in respect of the same except as expressly granted under the Contract.

8 LIABILITY

8.1 Subject to clause 8.2 all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Contract, whether by statute, common law, or otherwise, are, to the extent permitted by applicable law, hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose.

8.2 Neither party's liability for any of the following is excluded or limited by the Contract: (a) for death or personal injury resulting from negligence; (b) fraud or fraudulent misrepresentation; (c) or any liability which cannot be legally excluded or limited.

8.3 Subject to Clause 8.2, Bowman shall not be liable under or in relation to the Contract (whether such liability arises due to negligence, breach of contract, misrepresentation or otherwise) for indirect or consequential loss or damage.

8.4 Bowman'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 total Equipment Price(s) paid for the Equipment.

9 TERMINATION

9.1 The Client may only cancel an Order after the Contract has formed, with the written consent of Bowman (given in its sole discretion), and any such consent given shall be subject to the Client indemnifying Bowman for any costs, loss or damages it may suffer as a result of such cancellation.

9.2 Without prejudice to its other rights or remedies available to Bowman, Bowman may immediately terminate any Contract by notice or suspend further deliveries under the Contract without liability to the Client (and if the Equipment has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary) if:

9.2.1 the Client commits a material breach of any of the terms of the Contract and such breach is not capable of remedy;

9.2.2 the Client commits a material breach of any of the terms of the Contract and/or these Terms that is remediable but fails to remedy that breach within 14 business days of receiving a notice requiring it to do so;

9.2.3 an insolvency event occurs in relation to the Client;

9.2.4 the ability of the Client to accept delivery of the Equipment is delayed, hindered or prevented by a Force Majeure Event or circumstances beyond the Client's reasonable control;

9.2.5 the Client ceases or threatens to cease to carry on business.

9.3 On termination of the Contract:

9.3.1 the Client shall pay Bowman for all Equipment supplied up to and including the date of termination;

9.3.2 Bowman shall be entitled to enter any of the Client's premises and recover any Equipment and materials which are the property of Bowman and the Client hereby irrevocably licenses Bowman, its employees, agents and representatives to enter any such premises for that purpose.

9.4 Termination of a Contract shall not prejudice any of the parties' rights and remedies which have accrued as at termination.

10 FORCE MAJEURE

10.1 "Force Majeure Event" means any war, riot, civil commotion, fire, flood, storm, war, armed conflict or terrorist attack or event beyond Bowman's reasonable control.

10.2 If either party is prevented or delayed in the performance of any of its obligations under a Contract by a Force Majeure Event, that party shall forthwith serve notice on the other party specifying the nature and extent of the circumstances giving rise to the Force Majeure Event, and shall, subject to the service of such notice and to clause 10.3 below, have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure Event during its continuation, and for such time after it ceases as is necessary for that party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.

10.3 A party claiming to be prevented or delayed in the performance of any of its obligations under a Contract by reason of a Force Majeure Event shall use all reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which the Contract may be performed whilst the Force Majeure Event continues.

11 CONFIDENTIALITY

11.1 The Client shall keep secret and not divulge to any third party any confidential information obtained from Bowman in connection with a Contract or which becomes known to it through the performance of Contract.

11.2 The Client undertakes that it will not at any time hereafter, use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information which may have or may in the future come into its knowledge, and it shall use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

12 CLIENTS OBLIGATION'S

12.1 The Client shall:

12.1.1 provide Bowman (and its employees, agents, consultants and subcontractors) with such co-operation, access, resources and other facilities as may be reasonably requested by Bowman from time to time;

12.1.2 provide Bowman with such information and materials as Bowman may reasonably request in relation to the Contract and ensure that such information is accurate in all material respects; and

12.1.3 prepare the Client's premises for the supply of the Equipment.

12.2 If Bowman's performance of any of its obligations under the Contract is impacted, prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

12.2.1 Bowman shall (without limiting its other rights or remedies) have the right to suspend performance of the Contract until the Client remedies the Client Default, and to rely on the Client Default to relieve Bowman from the performance of any of its obligations to the extent the Client Default impacts, prevents or delays Bowman's performance of any of its obligations;

12.2.2 (subject to clause 8.2) Bowman shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Bowman's failure or delay to perform any of its obligations as set out in this clause 12.2; and

12.2.3 the Client shall reimburse Bowman (on written request) for any costs and/or losses sustained or incurred by Bowman arising directly or indirectly from the Client Default.

13 GENERAL

13.1 The Client may not assign any of its rights under the Contract to any third party without Bowman's prior written consent.

13.2 Bowman may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under the Contract, provided it gives written notice to the Client.

13.3 Each right or remedy of Bowman under the Contract is without prejudice to any other right or remedy Bowman may have whether in contract, tort or otherwise.

13.4 If Bowman fails or delays in enforcing any provision of the Contract such failure or delay shall not be construed as a waiver of any of its rights under the Contract. Any waiver of any breach or default under the Contract by Bowman shall not be deemed a waiver of any further breach or default or alter the terms of the Contract in any way.

13.5 If any provision of a Contract is held by any competent authority to be invalid, illegal or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.

13.6 All communications under the Contract shall be in writing and delivered to the other party at the address specified in the Contract by hand, first class post or by email. Notice shall be deemed served: if delivered by hand, at the time delivery is made; if sent by first class post, on the date two business days after the notice was delivered to the postal service provided that delivery is made between 9am and 5pm on a business day; and if by email within four (4) hours of such email being sent if sent between 9am and 5pm on a business day and otherwise at 9am at the place of receipt on the next business day.

13.7 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract, but this does not affect any right or remedy of a third party which exists, or is available apart from that Act.

13.8 Save as expressly referred to in this Contract, any changes to the Technical Specification, or the Equipment Prices, after the Contract has been signed, need to be agreed in writing by both parties. Unless and until any such change has been agreed, then the terms as set out in the Contract remain in force.

13.9 This Contract (including its formation, construction and performance) and these Terms shall be governed by the laws of England and Wales. The parties submit to the exclusive jurisdiction of the English courts