

ITM POWER GENERAL CONDITIONS OF PURCHASE FOR GOODS AND SERVICES (March 2024)

1. APPLICATION OF TERMS

- 1.1 These GCP shall be interpreted in accordance with the definition and rules of interpretation set out in Clause 21.
- 1.2 These GCP apply to each Binding Order between ITM Power and the Supplier for the supply of Goods or Services to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.3 Each Purchase Order shall constitute an offer by ITM Power to purchase the Goods or Services in accordance with these GCP.
- 1.4 The Purchase Order shall be deemed to be accepted, and an individual Binding Order formed, on the earlier of:
- the Supplier issuing a written acceptance of the Purchase Order;
 - the Supplier verbally confirming its acceptance of the Purchase Order to ITM Power;
 - two (2) Business Days from the date of Receipt of the Purchase Order by the Supplier, unless the Buyer is notified in writing by the Supplier that it is unable to fulfil such Purchase Order; or
 - the Supplier doing any act consistent with fulfilling the Purchase Order.
- 1.5 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Binding Order and the Supplier waives any right which it otherwise might have to rely on such GCP.
- 1.6 These GCP are the only conditions upon which ITM Power is prepared to deal with the Supplier and they shall govern the Binding Order to the entire exclusion of all other terms or conditions. These GCP apply to all ITM Power's purchases and any variation to these GCP shall have no effect unless expressly agreed in writing and signed by a director of ITM Power, or other authorised signatory.
- 1.7 In the event that the Purchase Order states that specific Incoterms shall apply to any Goods, such Incoterms shall apply to location of delivery, transfer of risk, responsibility of loading and unloading, arrangement of and allocation of costs of carriage, responsibility for export and import clearance and notices and assistance with information.
- 1.8 In the event there is a conflict between these Terms and Condition and any terms set out in the Purchase Order, the terms set out in the Purchase Order shall take precedence.

2. GENERAL OBLIGATIONS

- 2.1 The Supplier warrants and undertakes that on delivery and during the Warranty Period the Goods shall:-
- be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known by the Supplier to ITM Power expressly or by implication, including to form part of any ITM Power Goods to Customers, and in this respect ITM Power relies on the Supplier's skill and judgment;
 - be free from fault, defects in design, material and workmanship or other deficiency;
 - be manufactured and stored prior to delivery in accordance with Good Industry Practice;
 - be in compliance with all Laws relating to the manufacture, labelling, packaging, storage, handling, importing, exporting and delivery and all Laws relating to the Goods;
 - strictly correspond with (i) their description, (ii) any sample provided, (iii) the Specification, (iv) in all respects with the Purchase Order, (v) patterns supplied or advised by ITM Power to the Supplier, and (vi) all other requirements of the Binding Order; and

- be new and unused unless expressly agreed otherwise in the Purchase Order or in the Specification.
- 2.2 The Supplier shall ensure that it has and maintains all relevant consents, authorisations, licences and accreditations required to supply and deliver the Goods or Services prior to the delivery of any Goods and performance of any Services to ITM Power.
- 2.3 The Supplier agrees to use reasonable endeavours to assign to ITM Power upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods or Services in full or part. The Supplier agrees ITM Power may assign the benefit of this Clause 2 to its Customer providing ITM Power gives written notice reasonably promptly after such assignment.
- 2.4 Without prejudice to ITM Power's other rights under the GCP or otherwise, at ITM Power's option, the Supplier shall at its own cost (including the cost of transporting any Goods or equipment or attending the Project Site) promptly replace or repair any Defective Goods and failures or other detriment relating to Defective Goods or a defect in Services that arises during the Warranty Period. Where the Supplier cannot remedy the Defective Goods or any defects in Services within 48 hours of being notified of the Defective Goods or a defect in Services, the Supplier shall provide a plan to promptly remedy the Defective Goods or defect in Services for approval by ITM Power (acting reasonably) and such plan shall be the agreed remedial plan.
- 2.5 In the event that (a) the Supplier does not remedy the Defective Goods or defects in Services within the period of the agreed remedial plan or (b) the Supplier does not agree the time for remedy required by ITM Power (acting reasonably), ITM Power may perform or have others perform some or all of the remedial actions. The Supplier will pay or promptly reimburse ITM Power for all costs expended by ITM Power in remedying the Defective Goods or the defect in Services under this Clause 2.5.
- 2.6 Any replaced or repaired Goods replaced, modified or repaired under Clause 2.4, shall be subject to the warranty under Clause 2.1 for the Warranty Period. If, under the warranty, any Goods are modified or parts of the Goods are replaced by other parts, any spare parts corresponding to the replaced or modified parts that have been already supplied must also be modified or replaced by the Supplier free of charge and the technical documentation amended accordingly free of charge. If, due to the defects, the Defective Goods cannot be used either in full or in part, the warranty period shall be extended by the period during which the Defective Goods could not be used.
- 2.7 If, the same type of defect, failure or other detriment keeps occurring in the Goods or if other parts of the Goods are likely to be also affected by the defect, failure or other detriment the Supplier shall in addition remedy the underlying cause of the defect, failure or other detriment at its own expense by using suitable means agreed in writing with ITM Power, e.g. by changing the design and/or using other materials, and shall agree to a reasonable extension of the Warranty Period, as requested by ITM Power, for the parts in question.
- 2.8 The Supplier shall be relieved of its obligations under Clauses 2.4 and 2.5 solely to the extent that the Goods are Defective Goods directly as a result of any negligent acts or omissions of ITM Power.
- 2.9 The Supplier must have quality assurance programs in place adequate to support its performance of this Binding Order. The Supplier will cooperate with ITM Power to assure ITM Power of the quality processes used for the supply of its Goods or Services.
- 2.10 The Supplier must comply with all Laws relating to the management of health, safety and environmental risks relating to the Goods, Services and this Binding Order. The Supplier must have in place and maintain management systems that will ensure this. The Supplier must provide any information reasonably requested by ITM Power that is required to

assure ITM Power (or a Customer) that the Supplier is managing its obligations under this Clause.

3. DELIVERY

- 3.1 This Clause 3 is subject to Clause 1.7 but to the extent any Incoterms apply, the provisions of this Clause are deemed varied solely to the extent necessary to allow the relevant Incoterms provisions to apply but shall otherwise apply.
- 3.2 Time for delivery of the Goods will be of the essence. The Supplier shall deliver the Goods and perform the Services in accordance with the Delivery Date(s) and any delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Purchase Order or as otherwise agreed with ITM Power in writing. If no such date is specified or agreed then the Supplier shall deliver the Goods or Services during Normal Working Hours within 30 days of the date of the Purchase Order. In the absence of details in the Purchase Order, the delivery location shall be ITM Power's registered office.
- 3.3 Delivery of Goods shall be completed when the Goods have been unloaded at the location specified by ITM Power and such delivery has been received by a duly authorised agent, employee or location representative of ITM Power. ITM Power shall procure that such duly authorised agent, employee or location representative of ITM Power is at the delivery location during Normal Working Hours but not at any other Delivery Date and times unless ITM Power agrees otherwise in writing in order to accept such delivery at such times. Any arrangement by which the Goods are collected by ITM Power in return for a discount on the Price shall be agreed by the Parties in writing (where due to an emergency such arrangements cannot be committed to writing prior to collection, the Parties shall act in good faith and confirm such arrangements in writing as soon as possible following collection). Where ITM Power collects the Goods, collection is deemed delivery for the purposes of these GCP.
- 3.4 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall, as a minimum, contain ITM Power's Purchase Order number, the name and address of ITM Power, the name and address of the Supplier, a description and quantity of the Goods, and shall show separately any extra agreed charges for containers and/or any other item not included in the Price or, where no charge is made, whether the containers are required to be returned.
- 3.5 Unless otherwise agreed with ITM Power in writing, in respect of Goods the Supplier will unless otherwise stated in the Purchase Order, deliver the Goods to ITM Power in accordance with Delivered Duty Paid (Incoterms 2020) ("DDP") on the Delivery Date(s) to the address states in the Purchase Order or Clause 3.2 and with all documentation required by the Binding Order.
- Without limitation to the foregoing provision of this Clause 3.5, unless otherwise agreed with ITM Power in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to ITM Power as to the country of origin of the Goods.
- 3.6 All third party carriers engaged to deliver the Goods shall at no time be an agent of ITM Power and accordingly the Supplier shall be liable to ITM Power for the acts and omissions of all third party carriers engaged to deliver the Goods to ITM Power.
- 3.7 The Supplier must keep ITM Power informed as to any potential or actual delay to the delivery of any part of the Binding Order or other issues likely to affect the Delivery Date. This must be communicated by email to ProcurementManagementTeam@itm-power.com and legal@itm-

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		<p>power.com (or any other address agreed in writing the Parties) and contain the following details:</p>
<p>(a) cause of the delay and associated risks; (b) the consequence of the delay on any agreed dates and deadlines including the Delivery Date; and (c) planned and/or already taken mitigation measures to resolve the situation.</p>	<p>(c) the Parties confirm that the Liquidated Damages and ITM Power's rights in Clauses 3.8 and 3.9 are reasonable and proportionate to protect ITM Power's legitimate interest in timely performance; (d) if the Liquidated Damages for any specific delayed Goods or Services reach the Liquidated Damages Cap or if there are persistent delays to different parts of the Binding Order then the Parties agree that this is a material breach of these GCP and ITM Power may terminate the Binding Order; (e) Liquidated Damages can be asserted by ITM Power until two (2) years after the payment of the final invoice.</p>	<p>the Supplier's obligations under the Binding Order and such inspection or witnessing of testing shall not constitute acceptance of the Goods.</p>
<p>Such notification shall not release the Supplier from its obligation to adhere to the dates and deadlines agreed in the Binding Order.</p>		<p>ITM Power may require all first deliveries of parts to include a full first article inspection ("FAI") report be filled out by the Supplier. The sample, on which the FAI was performed shall be clearly marked, both on the sample and the FAI report. Where the drawing has been updated and there is a change in the form, fit or function of the part, then a FAI must be submitted for the change/update only. The FAI should confirm that all processes, materials and dimensions are met. In the case of raw material or process i.e. paint, coating, proof of acceptability shall be made available either through records or attached certificates. Drawing notes should be referenced and their acceptance confirmed. Any discrepancies detected by the manufacturer during the FAI shall be notified to ITM Power and a deviation should be sought in advance of any parts being supplied to ITM Power. Under no circumstances shall a nonconforming part be supplied to ITM Power without an ITM Power approved deviation. Failure to comply with the above requirements will entitle ITM Power to reject the Goods.</p>
<p>3.8 In the event of delays for which the Supplier is responsible, or in the event of such impending delays, the Supplier shall, promptly after becoming aware of the delay or the risk of delay, take at its own expense the acceleration measures reasonably required to avoid the delay or, if the delay cannot be avoided, to reduce the delay to the greatest extent possible. The acceleration measures are to include, in particular, increased use of personnel and material resources, multi-shift operations, overtime, work performed on non-Business Days and special shipment(s), which have to be carried out by the Supplier upon request of ITM Power as far as is necessary and reasonable. The Supplier shall also bear the costs for any necessary measures taken by ITM Power to mitigate the delay, as well as appropriate monitoring and control measures taken by ITM Power in connection with the delay and the risk of delay. These provisions shall apply accordingly in the event of reasonable concerns on the part of ITM Power that the Supplier will not fulfil all or some of its obligations arising from, or in connection with, the Binding Order in a timely manner for reasons for which the Supplier is responsible, with the requirement that the acceleration measures are to be taken immediately after notification of the concerns by ITM Power.</p>	<p>3.11 If the Parties have not agreed Liquidated Damages in respect of the Purchase Order (or if the Purchase Order excludes Liquidated Damages or sets them at 0%) and the Goods or Services are not delivered on the Delivery Date then, without prejudice to any other rights which it may have, ITM Power reserves the right to: (a) cancel the GCP in whole or in part; (b) refuse to accept any subsequent delivery of the Goods or performance of Services which the Supplier attempts to make with no liability whatsoever to the Supplier; and/or (c) claim from the Supplier all liabilities, costs, expenses, damages and losses affecting ITM Power as a result of the delay or non-performance, and in respect of Clause 3.11(a) and Clause 3.11(b) above.</p> <p>3.12 If the Supplier requires ITM Power to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to ITM Power and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.</p> <p>3.13 Where ITM Power agrees in writing to accept delivery by instalments the Binding Order shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment in accordance with these GCP shall entitle ITM Power at its option to treat the whole Binding Order as repudiated and Liquidated Damages shall be calculated against the Price of the whole Binding Order.</p>	<p>4.4 Without prejudice to other provisions of these GCP, ITM Power may give notice that it has not accepted the Goods if such Goods are Defective Goods and it may reject any such Defective Goods (such Goods on rejection, "Rejected Goods"). The whole of any delivery may be rejected if a reasonable sample of the Goods in that delivery is found not to conform in all material respects to the requirements of these GCP and any Specification.</p> <p>4.5 ITM Power's right of rejection under Clause 4.5 shall cease within a reasonable period of time after receipt of the Goods by ITM Power within which ITM Power might reasonably be expected to discover that the Goods are Defective Goods on acceptance (although if such defects are Latent Defects within a reasonable time of the Latent Defect becoming apparent).</p> <p>4.6 Without prejudice to the provisions of Clause 4.9, in relation to Rejected Goods, the Supplier shall, at ITM Power's written request:</p>
<p>3.9 If (i) further to the notification of concerns by ITM Power at Clause 3.8 the Supplier fails to take reasonable measures to accelerate the work, or (ii) material damage would occur to ITM Power or to third parties or to the environment as a result of the delay or the impending delay, or (iii) operational safety is at risk due to the delay or the impending delay, or (iv) the Supplier stops performing its obligations under the Binding Order except in accordance with its rights under these GCP, then:</p> <p>(a) ITM Power may complete or have a third party complete the Goods or perform the Services in whole or in part at the expense of the Supplier. The Supplier will pay or promptly reimburse ITM Power for all costs expended by ITM Power in connection with ITM Power exercising its rights under this Clause 3.9(a); and</p> <p>(b) the Supplier shall return to ITM Power, at ITM Power's request, any and all requested parts of the documentation, drawings, plans, data media and other technical documents which were prepared by the Supplier and/or its subcontractors (collectively referred to as the "Work Results") or provided to it (collectively referred to as the "Information Provided") in connection with the Binding Order promptly or at the point in time or milestone specified by ITM Power. With regard to the surrender of the Work Results and Information Provided, the Supplier cannot assert any rights.</p>	<p>3.14 If the Goods are delivered to ITM Power in excess of the quantities ordered ITM Power shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.</p> <p>3.15 ITM Power may, at its sole discretion, require the Supplier in respect of Goods, delay Delivery of the Goods or suspend all performance under the Binding Order for a period of up to six (6) months. In the event of any suspension of the Supplier's performance under this clause 3.15, ITM Power's obligation to pay for the Goods during the period of suspension will be suspended for the same period of time</p> <p>4. INSPECTION, ACCEPTANCE AND REJECTION</p> <p>4.1 At any time prior to delivery of the Goods to ITM Power, ITM Power shall have the right, on reasonable notice, to inspect and witness any Supplier testing of the Goods and the Supplier shall permit ITM Power to attend and the Customer and/or ITM Power's or Customer's agent to attend, subject to ITM Power ensuring that such third parties are subject to obligations of confidentiality.</p> <p>4.2 If the results of such inspection or testing provide evidence that the Goods do not conform or are unlikely to conform with the Binding Order or to any specifications and/or patterns supplied or advised by ITM Power to the Supplier, ITM Power shall inform the Supplier and the Supplier shall take such action as is necessary to ensure conformity and in addition ITM Power shall have the right to require and witness further testing and inspection.</p>	<p>4.7 (a) collect the Rejected Goods at the Supplier's risk and expense within seven (7) Business Days of issue of written notice from ITM Power rejecting the Goods; and (b) without extra charge, promptly (and in any event within fifteen (15) Business Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods to ITM Power subject to ITM Power not accepting its purchase obligations in accordance with Clause 4.5.</p> <p>4.8 The Supplier shall bear all additional costs incurred in performing its obligations under Clause 4.7, including the material and labour costs, documentation costs, transportation and travel costs to the respective place(s) where the Rejected Goods are being used and, any costs of dismantling and reassembly. If necessary, the remedy of the Rejected Goods shall be carried out with increased use of personnel and material resources, multi-shift operations, overtime, work performed on non-Business Days and special shipment(s).</p> <p>4.9 Risk and title in respect of any Rejected Goods shall pass to the Supplier on the earlier of: (a) collection by the Supplier in accordance with Clause 4.7; or (b) immediately following the expiry of seven (7) Business Days from ITM Power issuing written notification rejecting the Goods. If Rejected Goods are not collected within seven (7) Business Days of ITM Power issuing written notification rejecting the Goods, ITM Power may return the Rejected Goods at the Supplier's risk and expense and/or charge the Supplier for the cost of storage from the expiry of seven (7) Business Days from the date of notification of rejection.</p>
<p>3.10 Subject to Clause 3.15 and Clause 19, if any part of the Goods or Services are not delivered on the Delivery Date then:</p> <p>(a) the Supplier shall be liable to pay to ITM Power the Liquidated Damages;</p> <p>(b) the Supplier shall pay these Liquidated Damages on demand or ITM Power may deduct them from any payments due to the Supplier;</p>	<p>4.3 Notwithstanding any such inspection or witnessing of testing, the Supplier shall remain fully responsible for the Goods and any such inspection or witnessing of testing shall not diminish or otherwise affect</p>	<p>4.10 Where ITM Power rejects any Goods in accordance with Clause 4.5 and ITM Power does not require replacement Goods, ITM Power may by written notice:</p>

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4.11	(a)	cancel its purchase obligations in relation to such quantity of Rejected Goods. Should ITM Power have paid for such Rejected Goods the Supplier shall refund such payment to ITM Power within thirty (30) days of ITM Power cancelling such purchase obligations and informing the Supplier that ITM Power does not require replacements for such Rejected Goods;	5.	RISK/PROPERTY	6.9	(a)	the Services and any associated information and materials provided by the Supplier in connection with Services, including computer programs, data, reports and specifications;; and
	(b)	notify the Supplier that it will arrange for a replacement to the Rejected Goods be supplied by itself or via third parties (all costs relating to this shall be borne by the Supplier). Insofar as a defect is not fully remedied by substitute performance, the Supplier shall remain liable for the defect in accordance with the provisions of the Binding Order; or rescind the Binding Order; and				(b)	the use of ITM Power's equipment in relation to the Goods or Services.
	(c)	be indemnified by the Supplier for the full damages and losses caused by the defect of the Rejected Goods unless the Supplier is not responsible for the defect.					
	(d)	ITM Power shall be entitled to the rights in Clause 4.10 without the need to set a deadline for remedying the defect, provided that:					
	(e)	the Supplier has seriously and definitively refused the remedy of the Rejected Goods;					
4.12	(a)	the remedy of the Rejected Goods has failed, or is unsuitable for ITM Power requirements;	6.	SERVICES	6.11		
	(b)	it is certain that the Supplier will not remedy the Rejected Goods within a reasonable period of time;					
	(c)	the remedy of the Rejected Goods is impossible for the Supplier; or					
	(d)	there are special circumstances that justify the immediate exercise of some, or all of the rights listed in Clause 4.10, taking into account the interests of both parties. This can be the case, in particular, if					
	(e)	ITM Power has lost confidence in the Supplier's ability to perform;					
	(i)	the Supplier has concealed the defect with fraudulent intent;	6.1		6.12		
	(ii)	the defect is due to gross negligence or wilful intent on the part of the Supplier;					
	(iii)	there is a risk of disproportionate damage to ITM Power or to third parties as a result of waiting due to a deadline for the Supplier to remedy the defect; or					
	(iv)	the safety of ITM Power's plant, individuals or the environment is at risk.					
	(v)	Where the Supplier is required by Law, Guidance, and/or Good Industry Practice to order a product recall ("Requirement to Recall") in respect of the Goods, the Supplier shall:					
	(a)	promptly (taking into consideration the potential impact of the continued use of the Goods, service users and ITM Power as well as compliance by the Supplier with any regulatory requirements) notify ITM Power in writing of the recall together with the circumstances giving rise to the recall;	6.4		7.		
	(b)	from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with Clause 2 and Clause 4.5;					
	(c)	consult with ITM Power as to the most efficient method of executing the recall of the Goods and use its reasonable endeavours to minimise the impact on ITM Power of the recall; and					
	(d)	indemnify and keep ITM Power indemnified against, any loss, damages, costs, expenses (including legal costs and expenses), claims or proceedings suffered or incurred by ITM Power as a result of such Requirement to Recall.					
	(e)	The Supplier shall co-operate with ITM Power in all matters relating to the Services.					
	(a)	The Supplier shall use reasonable skill and care in the performance of the Services.	6.5		7.1		
	(b)	The Supplier shall observe, and ensure that all employees, consultants, agents and subcontractors which it engages in relation to the Services observe, all health and safety rules and regulations and any other security requirements that apply at ITM Power's premises and that have been communicated to it by ITM Power from time to time. ITM Power reserves the right to refuse such persons access to ITM Power's premises, which shall only be given to the extent necessary for the performance of the Services.					
	(c)	The Supplier shall notify ITM Power as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services.					
	(d)	The Supplier shall before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:					
	(e)	Where ITM Power agrees in writing to accept delivery by instalments the Binding Order shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment in accordance with these GCP shall entitle ITM Power at its option to treat the whole Binding Order as repudiated and Liquidated Damages shall be calculated against the Price of the whole Binding Order.					
	(a)	refuse to accept any subsequent performance of the Services which the Supplier attempts to make;	6.6		7.2		
	(b)	require the Supplier to re-perform the Services free of charge and as expeditiously as possible;					
	(c)	notify the Supplier that it will arrange for a replacement Supplier to provided the Services (all costs relating to this shall be borne by the Supplier);					
	(d)	rescind the Binding Order; and					
	(e)	be indemnified by the Supplier for the full damages and losses caused by the Buyer's failure unless the Supplier is not responsible for its failure.					
	(a)	public liability insurance for not less than £5,000,000 (five million pounds) per claim; and	6.7		8.		
	(b)						
	(c)						
	(d)						
	(e)						
	(a)		6.8		8.1		
	(b)						
	(c)						
	(d)						
	(e)						

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- (b) product liability insurance for not less than £5,000,000 (five million pounds) per claim for claims arising from any single event and in aggregate for all claims arising in a year;
- (c) employers' liability insurance (or such other equivalent insurance) at the levels required in the Laws that apply to the jurisdiction in which the Supplier operates); and
- (d) professional indemnity insurance for not less than £1,000,000 (one million pounds) per claim for claim arising from any single event;
- together with any additional requirements set out in the Purchase Order, Specification or Special Terms.
- 8.2 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under these GCP which they are contracted to fulfil.
- 8.3 The Supplier shall produce to ITM Power on request copies of all insurance policies referred to in Clause 8.1 or other evidence confirming the existence and extent of cover given by these policies, together with receipts or other evidence of payment of the premiums under these policies.
- 8.4 Nothing in these GCP shall limit or exclude the liability of either Party for:
- (a) death or personal injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) any liability which cannot be limited or excluded in Law; or
- (d) the indemnities contained in these GCP; or
- (e) the liability of the Supplier under Clauses 2.4, 2.5, 3.8, 3.9 and 3.11; or
- (f) the gross negligence, deliberate default or wilful misconduct of that Party, its employees, agents or subcontractors.
- 8.5 Without prejudice to Clause 8.4, each Party's total liability arising under or in connection with the Binding Order, whether arising in contract, tort (including negligence), or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the greater of:
- (a) total value of the Binding Order (including series of connected Binding Orders); or
- (b) in respect of the Supplier only, £1,000,000 (one million pounds).
- 8.6 The Supplier shall indemnify ITM Power against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by ITM Power arising out of or in connection with:
- (a) any claim made against ITM Power for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods or use of the Services; or
- (b) any claim made against ITM Power by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods or a defect in the Services, to the extent that the defect in the Goods or Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- 8.7 If any third party makes a claim, or notifies an intention to make a claim, against ITM Power which may reasonably be considered likely to give rise to a liability under the indemnity in Clause 8.6 (a "Claim"), ITM Power shall:
- (a) as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior

- written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed), provided that ITM Power may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to Supplier, but without obtaining Supplier's consent) if Customer reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
- (c) provide the Supplier with reasonable support to defend, settle or compromise the claim at the Supplier's expense; and
- (d) subject to Supplier providing security to ITM Power to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

9.

9.1

PRICE AND PAYMENT

The Price of the Goods and Services shall be as stated in the Purchase Order and unless otherwise agreed in writing by ITM Power shall be exclusive of value added tax but inclusive of all other charges and expenses. Unless otherwise agreed, the Price shall remain fixed and is the entire Price payable by ITM Power to the Supplier in respect of the provision of the Goods and Services; this includes, without limitation:

- (a) packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, all appropriate tax and duty (excluding VAT), any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to ITM Power in any media, and any training in relation to the use, storage, handling or operation of the Goods;
- (b) any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights, and any licence rights granted to ITM Power in accordance with Clause 8; and
- (c) costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods, and any other costs incurred by the Supplier.

9.2

ITM Power shall pay the Price of the Goods or Services in receipt of a valid invoice and shall make the payment no later than 75 days following receipt by ITM Power of the valid VAT invoice, after delivery of the Goods or completion of the Services to ITM Power and where such invoice is undisputed.

9.3

Invoices must be sent to accounts@itm-power.com and the contact point for the Goods and Services at ITM Power.

9.4

ITM Power will raise any disputes promptly after receiving an invoice. ITM Power may withhold payment of any disputed or insufficiently documented amounts. In the event of any dispute over payment, both parties will act in good faith to resolve the dispute promptly.

9.5

Without prejudice to any other right or remedy, ITM Power reserves the right to set off any amount owing at any time from the Supplier to ITM Power against any amount payable by ITM Power to the Supplier under the GCP.

9.6

Payment of an invoice by ITM Power shall not constitute acceptance of the Goods or the Services or any part thereof covered by the invoice and shall be without prejudice to any and all claims ITM Power may have against the Supplier in connection with the Binding Order.

9.7

Unless otherwise agreed:

- (a) where the Purchase Order and/or Specification confirms that the payment profile for the Goods or Services is monthly in arrears, the Supplier shall invoice ITM Power, within fourteen (14) days of the end of each calendar

month, the Price (plus any applicable VAT thereon) in respect of the Goods supplied or Services performed in the preceding calendar month;

- (b) each invoice shall be a valid VAT invoice and shall contain such information and be addressed to such individual as ITM Power may inform the Supplier from time to time. Invoices shall show the VAT calculations as a separate line item;
- (c) no variation in the Price nor extra charges shall be accepted by ITM Power unless as part of a written variation signed by a director of ITM Power, or other authorised signatory;
- (d) any payments made ahead of delivery of the Goods or provision of the Services do not constitute a deposit but part or whole payment towards the Goods or Services; and
- (e) at the request of ITM Power, the Supplier will accept earlier payments from ITM Power and will act in good faith to provide any vesting certificates or security or other GCP to provide security for such early payments to ITM Power as ITM Power may reasonably request.

9.8

If the Supplier does not receive any amount due from the Buyer under the Binding Order on the due date (pursuant to Clause 9.2 above), the Supplier will be entitled to charge interest on all valid overdue amounts at a rate of 0.5% per annum above Base Rate, accruing on a simple basis from the day the amount became overdue and ending on the day payment is received in full by the Supplier. The Parties agree that this represents a substantial remedy in accordance with section 8(2) of the Late Payments of Commercial Debts (Interest) Act 1998.GCP

10.

10.1

CONFIDENTIALITY

In respect of any Confidential Information it may receive directly or indirectly from the other Party ("Discloser") and subject always to the remainder of this Clause 10, each Party ("Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that the provisions of this Clause 10 shall not apply to any Confidential Information:

- (a) which is in or enters the public domain other than by breach of this Clause 10 or other act or omissions of the Recipient;
- (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (c) which is authorised for disclosure by the prior written consent of the Discloser;
- (d) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
- (e) subject to Clause 10.2, which is a Mandatory Disclosure.

10.2

In the event the Supplier is required to make a Mandatory Disclosure, where permitted in Law, the Supplier shall give immediate notice to ITM Power so it (or if relevant its Customer) may take appropriate legal steps to minimise the disclosure required or withhold disclosure until ITM Power (or if relevant its Customer) has taken appropriate legal steps to minimise or prevent the disclosure. The Supplier will use its reasonable endeavours to ensure confidential treatment of any information subject to a Mandatory Disclosure.

10.3

Provided ITM Power makes clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 10.3, ITM Power may disclose the Supplier's Confidential Information to the following third parties:

- (a) any employee of ITM Power or ITM Power Group or any consultant, contractor or other person engaged by ITM Power for the purposes of administering any Binding Order

	and ITM Power's use of the Goods or Services and onward supply in ITM Power's products and projects;		the Supplier shall hold such rights on trust for ITM Power and shall execute such documents as may be necessary to effect such disposition of rights to the fullest possible extent to ITM Power.		(including without limitation any potential or actual breaches of confidentiality or actual information security breaches).
	(b) any relevant party for the purpose of the examination and certification of ITM Power's accounts;			15.4	The Parties acknowledge that they are not intended to supply Personal Data in order to meet the requirements under these Terms of Conditions. In the event, either Party becomes aware that it is necessary to gather, process or transfer Personal Data in order to fulfil the requirements of a Binding Order or the GCP, such Party will notify the other and the Parties will act in good faith to negotiate and agree to enter into any data processor or equivalent written agreement required to comply with Laws relating to Personal Data.
	(c) any Customer of ITM Power who will receive any part of the Goods or Services as part of equipment or services supplied by ITM Power to such Customer to the extent such information is limited to that needed to discharge ITM Power's obligations to that Customer and specifically any information supplied to ITM Power by the Supplier relating to the installation, use, operation and maintenance of the Goods or Services.	12.3	Save as expressly set out in the GCP, the Supplier is granted no right or interest in or over any Intellectual Property of ITM Power. The Supplier shall not use the name of ITM Power or any other trade mark, name or logo of ITM Power without the prior written consent of ITM Power.		
		13.	PACKAGING, IDENTIFICATION AND END OF USE	16.	TERMINATION
		13.1	The Supplier shall comply with all obligations imposed on it by Law relevant to the Goods in relation to packaging, identification, and obligations following end of use by ITM Power.	16.1	ITM Power shall have the right at any time and for any reason to terminate the Binding Order in whole or in part by giving the Supplier no less than 4 weeks' written notice whereupon all work on the Binding Order shall be discontinued and ITM Power shall pay to the Supplier its costs incurred (or non-cancellable costs) for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss and the Supplier shall use reasonable endeavours to mitigate its losses.
10.4	The Supplier may only disclose ITM Power's Confidential Information, and any other information provided to the Supplier by ITM Power in relation to the provision of the Goods or Services, to the Supplier's staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under the Binding Order. The Supplier shall ensure that such staff are aware of and shall comply with the obligations in this Clause 10 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at ITM Power's written discretion, destroyed securely or returned to ITM Power when it is no longer required. The Supplier shall not, and shall ensure that its staff do not, use any of ITM Power's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations under these GCP.	13.2	Unless otherwise specified in any Specification or otherwise agreed with ITM Power in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom.	16.2	The Binding Order (and, at ITM Power's discretion, any other Binding Orders which have not been fully performed by the Supplier) may be terminated immediately by ITM Power on written notice, if the Supplier:
		13.3	All Goods that customarily bear any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact. Without prejudice to the generality of the foregoing, the Supplier shall label all Goods supplied to ITM Power, and the packaging of such Goods, to highlight environmental and safety information as required by applicable Law.		(a) is in material breach under a Binding Order and in the case of any breach capable of remedy has failed to remedy the breach within a period of 30 days after receipt of written notice to do so;
10.5	For the avoidance of doubt, save as required by Law, the Supplier shall not, without the prior written consent of ITM Power announce that it has been appointed as a Supplier to ITM Power and/or make any other announcements about the Binding Order and these GCP.	13.4	Unless otherwise set out in any Specification or agreed with ITM Power in writing, the Supplier shall collect without charge any returnable containers (including pallets) within twenty-one (21) days of the date of the relevant delivery. Empty containers not so removed may be returned by ITM Power at the Supplier's expense or otherwise disposed of at ITM Power's discretion. The Supplier shall credit ITM Power in full for any containers for which ITM Power has been charged upon their collection or return.		(b) if a Force Majeure Event affects the Supplier for more than 30 days;
10.6	Clause 10 shall remain in force for all other Confidential Information for a period of five (5) years after the final delivery of Goods or completion of the Services to ITM Power under these GCP.				(c) is dissolved or struck off the register of companies maintained by the Companies Registration Office or a winding up order is made against the Supplier or a meeting is convened, resolution passed or any step taken by the Supplier with a view to the winding-up of the Supplier except for the purpose of a solvent reconstruction, reorganisation, merger or consolidation;
11.	ITM POWER'S PROPERTY	14.	ELECTRONIC PRODUCT INFORMATION		(d) if a receiver (including fixed charge or court appointed), administrative receiver, manager, insolvency practitioner or similar officer shall be appointed over the whole or a substantial part of the undertaking, property or assets of the Supplier;
11.1	All ITM Power's equipment and all other materials, resources and tools, drawings, specifications and data supplied by ITM Power to the Supplier or not so supplied but used by the Supplier specifically in the manufacture of the Goods or provision of Services shall at all times be and remain the exclusive property of ITM Power. It shall be held by the Supplier in Supplier's safe custody at the Supplier's own risk and maintained and kept in good condition by the Supplier until returned to ITM Power and shall not be disposed of other than in accordance with ITM Power's written instructions, nor shall such items be used otherwise than as authorised by ITM Power in writing.	14.1	Where requested by ITM Power, the Supplier shall provide ITM Power with any required Product Information relating to the Goods or Services in such manner and upon such media as agreed between the Supplier and ITM Power from time to time for the sole use of ITM Power.		(e) is unable to pay its debts within the meaning of section 123(2) of the Insolvency Act 1986;
		14.2	The Supplier warrants that the Product Information is complete and accurate as at the date upon which it is delivered to ITM Power.		(f) enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the Supplier;
12.	INTELLECTUAL PROPERTY	14.3	If the Product Information ceases to be complete and accurate, the Supplier shall promptly notify ITM Power in writing of any modification or addition to or any inaccuracy or omission in the Product Information.		(g) if notice of intention to appoint an administrator is given by any person (including the Supplier's directors, the Supplier or any qualifying floating charge holder as defined in the Insolvency Act 1986) or any step is taken by any person with a view to placing the Supplier into administration as defined by the Insolvency Act 1986;
12.1	Unless specified otherwise in any Specification, the Supplier hereby grants to ITM Power, for the life of the use of Goods by ITM Power, an irrevocable, royalty-free, non-exclusive licence of any Intellectual Property Rights required for the purposes of receiving and using, and to the extent necessary to receive and use, the Goods (to include any associated technical or other documentation and information supplied or made accessible to ITM Power in any media) in accordance with these GCP and any Specification.	15.	RECORDS RETENTION, INFORMATION SECURITY AND DATA PROTECTION		(h) if any event or circumstance occurs which under the Law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in the above sub-Clauses in relation to the Supplier; or
		15.1	Subject to any statutory requirement, the Supplier shall keep secure and maintain for at least six (6) years, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to the Goods and Services.		(i) if there is a material adverse change in the credit rating of the Supplier and the Supplier has not provided security to ITM Power on ITM Power's request (acting reasonably in the circumstances) in a reasonably timescale; or
12.2	As between the Supplier and ITM Power, all Intellectual Property Rights created in the course of the Services which subsists now or at any time in the future shall without limitation vest in and be the absolute property of ITM Power. To the extent that any Intellectual Property Rights created in the course of the Services vests in the Supplier by operation of Law or otherwise, the Supplier hereby assigns to ITM Power with full title guarantee all rights in such Intellectual Property. If it is not possible by operation of Law for the Supplier to assign such rights in a territory outside the United Kingdom as a result of differences in national Laws,	15.2	ITM Power shall have the right to audit the Supplier's compliance with the Binding Order and any Specification. The Supplier shall permit or procure permission for ITM Power or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under the Binding Order and any Specification.		
		15.3	The Supplier will implement all appropriate security measures to protect Confidential Information and Personal Data against accidental, unlawful, or unauthorised (i) destruction, (ii) loss, (iii) alteration, (iv) disclosure or (v) access (including remote access). The Supplier shall notify ITM Power forthwith of any information security breaches or near misses		

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- (j) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) has a financial position which deteriorates so far as to reasonably justify, in the opinion of ITM Power, that the Supplier's ability to fulfil its obligations under the Binding Order is in jeopardy.
- 16.3 If ITM Power has reasonable grounds for believing the Supplier will be unable to substantially fulfil its obligations under the Binding Order, ITM Power may require the Supplier to provide reasonable written evidence that the Supplier will fulfil its obligations. If the Supplier fails to provide such evidence within 30 days of ITM Power's request, ITM Power may treat that failure as a material breach and terminate the relevant Binding Order or any agreement relating to the Goods or Services in whole or part.
- 16.4 Termination or expiry of these GCP for any reason shall be without prejudice to the accrued rights of the Parties on the date of such termination or expiry. Clauses 2.1, 2.4, 2.5, 8, 10, 12, 15, 16.3, 16.5, 18 and 20 shall continue in force notwithstanding termination.
- 16.5 Upon termination of any Bonding Orders with the Supplier for whatever reason the Supplier will deliver to ITM Power all books, documents, computer media, papers, materials and other property relating to the business of ITM Power which may then be in its possession or under its power or control.
- 17. PROHIBITED ACTS AND CODE OF CONDUCT**
- 17.1 The Supplier warrants and represents that:
- (a) it has not committed any offence under the Bribery Act 2010 or done any of the following ("Prohibited Acts"):
- (i) offered, given or agreed to give any officer or employee of ITM Power any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with ITM Power or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with ITM Power; or
- (ii) in connection with these GCP paid or agreed to pay any commission other than a payment, particulars of which (including the GCP of the agreement for its payment) have been disclosed in writing to ITM Power; and
- (b) it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 17.2 The Supplier will comply with ITM Power's:
- (a) Supplier Code of Conduct; and
- (b) any requirements set out on the ITM Power website, as updated from time to time by ITM Power, including the ITM Supplier Requirements Document, unless such requirements clearly state they are not applicable to the type or nature of the Goods or Services being supplied by the Supplier under the Purchase Order.
- 17.3 If the Supplier or its staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with ITM Power or is in material breach of ITM Power's Supplier Code of Conduct, ITM Power shall be entitled:
- (a) to terminate any and all Binding Orders and recover from the Supplier the amount of any loss resulting from the termination;

- (b) to recover to the Supplier the amount or value of any gift, consideration or commission concerned;
- (c) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010; and
- (d) any termination under this Clause 17.3 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to ITM Power.
- 18. ASSIGNMENT AND SUBCONTRACTING**
- 18.1 The Supplier shall not without the prior written consent of ITM Power assign, transfer (in whole or in part) or charge or deal in any manner with the Binding Order or the benefit or burden of or the rights under the Binding Order.
- 18.2 ITM Power may assign, transfer (in whole or in part) or charge or deal in any manner with the Binding Order or the benefit or burden of or the rights under the Binding Order.
- 18.3 The Supplier may not subcontract any part of its obligations under the Binding Order except as agreed in writing by ITM Power. The Supplier will ensure that any subcontracts are in all material respects consistent with the Binding Order and these GCP. The Supplier shall be responsible for any act or omission by its subcontractors, as if they were the Supplier's own act or omission.
- 19. FORCE MAJEURE**
- 19.1 Neither Party shall be liable for any failure or delay in performing its obligations under the Binding Order to the extent that such failure or delay is caused by a Force Majeure Event.
- 19.2 A Force Majeure Event means: (i) riots, wars, blockades, or threats or acts of sabotage or terrorism or civil commotion, armed conflict; (ii) explosion, sonic boom, collapse of building structures, malicious damage, breakdown of plant or machinery, (iii) earthquakes, floods, fires, named hurricanes or cyclones, tidal waves, tornadoes, or other natural physical disasters; radioactive contamination, epidemics, maritime or aviation disasters; (iv) strikes or labour disputes at a national or regional level or involving labour not forming part of the Party's scope, which materially impair the ability of the Party claiming force majeure to fulfil the Binding Order; (v) government sanctions, embargoes, mandates, or Laws, that prevent performance; (vi) non-performance of a Party's supplier where such supplier has been or is affected by one of the above Force Majeure Events and if the parties to the Binding Order agree that substitute performance by another supplier is impracticable under the circumstances.
- 19.3 The Supplier will implement and maintain appropriate business continuity plans to mitigate any Force Majeure Event and will take all reasonable steps to manage and mitigate any Force Majeure Events that arise. The Supplier will notify ITM Power promptly on suffering any Force Majeure Event and will keep ITM Power updated in relation to the Force Majeure Event and its impact on the supply of Goods or Services under the Binding Order.
- 20. GENERAL**
- 20.1 Each Party shall at its own expense take all reasonably necessary steps and co-operate fully with the other Party to ensure that it obtains the full benefit of these GCP and shall execute such documents and take such other steps (or procure other necessary persons to take such steps) as are reasonably necessary or appropriate for vesting in the other Party all its rights and interests in the Binding Order and the full benefit of these GCP.
- 20.2 Nothing in these GCP is intended to, or shall operate to, create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including

the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

The Supplier acknowledges that it has not been induced to enter into these GCP by nor has it relied upon any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of ITM Power or any other person save for those contained in these GCP. Accordingly, the Supplier acknowledges and agrees that the only remedy available to it in respect of the subject matter of each Binding Order shall be for breach of contract under the terms of the Binding Order and that it shall have no remedies or claims under these GCP for any innocent or negligent misrepresentation based upon any statements made prior to the date of these GCP or the Binding Order. Nothing in these GCP shall exclude liability for fraud or fraudulent misrepresentation.

The Binding Order constitutes the entire agreement and understanding between the Parties with respect to the subject matter of the Binding Order, and supercedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the Parties relating to such subject matter.

Except as otherwise stated in these GCP, the rights and remedies of each Party under these GCP are in addition to any other rights or remedies under the GCP or the general Law, and may be waived only in writing and specifically. Delay in exercising or non-exercise of any right or a partial exercise of any right under these GCP is not a waiver of that or any other right under these GCP. Waiver of a breach of any term of these GCP shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

A person who is not a party to these GCP has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of these GCP.

All notices between the Parties with respect to the GCP shall be in writing and signed by or on behalf of the Party giving it. Any notice shall be duly served (i) on delivery if delivered by hand, (ii) 48 hours after sending if sent by first class post or recorded delivery, provided that in each case the notice is sent to the address of the addressee in the Purchase Order or such other address as the addressee may from time to time have notified for the purpose of this condition.

These GCP and any issues or disputes arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation or otherwise) shall be governed by and construed in accordance with the laws of England and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

INTERPRETATION

In these GCP the following words shall have the following meanings:

- (a) **Binding Order** means any order which has been placed by ITM Power and accepted by the Supplier for the supply of Goods or Services under these GCP and shall constitute a binding contract between the Parties in accordance with Clause 1;
- (b) **Business Day** means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
- (c) **Confidential Information** means any confidential information whether documents and other tangible items that record information, whether on paper, in machine readable format, by sound or video, by way of samples or otherwise concerning the business, affairs, Customers, clients or suppliers of the other Party or of any member of the ITM Power Group, including in each case, technical, commercial and other information, whether relating to a

	Party's operations, processes, business or operational plans, product information, property, way of doing business, the terms of these GCP or any Binding Order, Intellectual Property Rights, results, software, market opportunities and any information relating to Customers and Customer Orders;		discovered by the exercise of ordinary and reasonable care;		(gg)	Services means the services of the type and nature set out in the Specification (if any) or the Purchase Order that the Supplier is required to supply to ITM Power pursuant to a Binding Order.
(d)	Customer means any customer or end customer of ITM Power Goods or Services relevant to the Binding Order;	(s)	Law means:		(hh)	Special Terms means any additional terms agreed in the Purchase Order or otherwise as applying to this Binding Order;
(e)	Customer Order means any order or contract to a Customer that ITM Power has entered into;		(i)	any applicable statute or proclamation or any delegated or subordinate legislation or regulation;	(ii)	Specification means, taken together, in the following order of priority:
(f)	DDP shall have the meaning given to it in clause 4.5(a);		(ii)	any applicable European Union directive, regulation, decision or law;	(i)	any detail relating to the Specification of the Goods or Services set out, appended to or referred to in the Purchase Order;
(g)	Defective Goods means any defect, failure or other detriment to the Goods which arises as a result of a breach of the warranties set out in Clause 2.1 or any warranty in any Special Terms;		(iii)	any applicable judgment and orders of any court of competent jurisdiction;	(ii)	any written statements of ITM Power's requirements relating to the Goods or Services as provided by ITM Power to the Supplier;
(h)	Delivery Date means any dates or timescales relating to the delivery of the Goods or provision of Services as set out in the Binding Order or as otherwise agreed between the Parties in writing;		(iv)	requirements set by any regulatory body or government agency or authority;	(iii)	any written statements of the Supplier provided to ITM Power confirming how it will meet such requirements; and
(i)	End Destination means the end location for the Goods where Goods will be incorporated or form part of ITM Power Goods;		(v)	regulatory approvals, permits, licences and authorisations that apply to a Binding Order or the Goods or Services; and	(iv)	the statement of the prices for the Goods or Services,
(j)	Good Industry Practice means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the manufacture and/or supply of goods similar to the Goods under the same or similar circumstances as those applicable to this GCP, including in accordance with any codes of practice published by relevant trade associations;		(vi)	any applicable code of practice,		whether or not such ITM Power and Supplier statements are in a single document or separate documents and as amended and/or updated in accordance with these GCP;
(k)	Goods means goods of the type and nature set out in the Specification (if any) or the Purchase Order that the Supplier is required to supply to ITM Power pursuant to a Binding Order;	(t)		in each case as applicable in England and Wales or the jurisdiction for a Supplier or the End Destination;	(jj)	Supplier means the supplier named on the Purchase Order;
(l)	Guidance means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Goods or Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by ITM Power;		(u)	Liquidated Damages Cap means 10% (ten percent) of the Price (or such other percentage as is specified in the Purchase Order), that the Supplier must pay to ITM Power for each full week that the Goods or Services have not been delivered after the Delivery Date;	(kk)	Supplier Code of Conduct means ITM Power Group's code of conduct for Suppliers as available on ITM Power Group's website at www.itm-power.com from time to time;
(m)	Incoterms means the terms included in the 9 th version of the Incoterms Rules which came into force on 1 January 2020;	(v)		Mandatory Disclosure means disclosures of specific Confidential Information which the Recipient is required by Law or the rules of any securities exchange on which the Recipient is listed;	(ll)	GCP means these terms and conditions for the purchase of Goods together with any Special Terms and any other documents (if any) which are either appended or referred to in the Purchase Order or which ITM Power and the Supplier have executed or expressly agreed in writing shall form a contract between them in connection with the supply of the Goods or Services by the Supplier;
(n)	Intellectual Property Rights means all patents, copyright, design rights, registered designs, trade marks, service rights, know-how, database rights, confidential formulae, rights in Confidential Information, inventions, moral rights and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs (all whether registered or not and including all applications for any of them and all equivalent rights in all parts of the world), whenever and however arising for their full term, and including any divisions, re-issues, re-examinations, continuations, continuations-in-part, and renewals;	(w)		Normal Working Hours means 8.30am to 5pm on any Business Day (except Business Days between Christmas and New Year in any year);	(mm)	VAT means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax; and
(o)	ITM Power means ITM Power (Trading) Limited;	(x)		Party means ITM Power or the Supplier as appropriate and Parties means both ITM Power and the Supplier;	(nn)	Warranty Period means the longer of (a) 24 (twenty-four) months from the date of acceptance of the Goods, (b) any longer time is set out in the Purchase Order or Specification or (c) provided under the Laws of the relevant jurisdiction of the Supplier.
(p)	ITM Power Goods means any goods or equipment supplied by ITM Power to its Customers or any component part of such goods or equipment;	(y)		Personal Data means any information relating to an identified or identifiable individual, unless otherwise defined under Laws related to the protection of individuals, the processing of such information, and security requirements for and the free movement of such information;		
(q)	ITM Power Group means any affiliate of ITM Power (as defined under section 1159 of the Companies Act 2006);	(z)		Price means the price exclusive of VAT that is payable to the Supplier by ITM Power as set out in the Specification and/or Purchase Order for the full and proper performance by the Supplier of its obligations under each Binding Order;	21.2	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
(r)	Latent Defect means a defect which is hidden from knowledge or concealed from sight and cannot be	(aa)		Product Information means any information held by the Supplier about the Goods and Services being supplied.	21.3	Any phrase in this GCP introduced by the term "include", "including", "in particular" or similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.
		(bb)		Project Site means either an ITM Power site or third party site or Customer site where ITM Power is manufacturing, installing or commissioning the ITM Power Goods;	21.4	Clause headings do not affect the construction and interpretation of these conditions and are for reference only.
		(cc)		Purchase Order means a purchase order issued by ITM Power to the Supplier referring to these GCP and specifying the Goods or Services to be supplied by the Supplier;	21.5	References in these GCP to the "Goods and Services" and "Goods or Services" means the Goods and/or Services (as applicable).
		(dd)		Receipt means if sent by first class post at 9.00 am on the second Business Day after posting or if sent by email at the time of transmission.		
		(ee)		Rejected Goods has the meaning given under Clause 4.5;		
		(ff)		Requirement to Recall has the meaning given under Clause 4.10;		