



KYTE POWERTECH GENERAL SALES CONDITIONS

KYTE POWERTECH GENERAL SALES CONDITIONS

These KYTE POWERTECH General Sales Conditions (the "Conditions") apply to the provision of Equipment by KYTE POWERTECH to a Purchaser. These Conditions in conjunction with a valid Order form the Contract.

1. DEFINITIONS AND INTERPRETATION

1.1. In these Conditions the following words shall have the following meanings:

"Business Day" means a day (other than a Saturday, Sunday or public holiday in Ireland) when banks in Dublin are open for business.

"Confidential Information" means any and all information provided by one party (the Disclosing Party) to the other party (the Receiving Party) under the Contract that is either (i) marked as being confidential (or in the case of verbal discussions is later confirmed in writing to be confidential) or (ii) information (however communicated) that is of a type that the other party could reasonably have been expected to know that the information was confidential.

"Contract" means an Order and these Conditions.

"Delivery" means delivery of the Equipment in accordance with clause 6.

"Equipment" means any equipment ordered by and supplied to the Purchaser under a Contract.

"Force Majeure Event" means any circumstance not within a party's reasonable control including, without limitation:

- acts of God, fire flood, storm, drought, perils of the sea, earthquake or other natural disaster;
- epidemic or pandemic;
- terrorist attack, civil war, civil commotion or riots, war, civil unrest, threat of and preparation for war, armed conflict, imposition of sanctions or embargoes, or breaking off of diplomatic relations;
- nuclear, chemical or biological contamination or sonic boom;
- any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent, as long as such failure is not due to failures or omissions on the part of either or both of the parties;
- any collapse of buildings, breakdown of plant or machinery, fire, explosion or accident; and
- interruption or failure of utility service.

"Installation and Operation Manual" means the installation and operation manual provided by KYTE POWERTECH to the Purchaser in connection with any Equipment as well as any updates thereto as may be provided from time to time.¹

"Intellectual Property Rights" means any and all intellectual property rights of whatever nature, including trade marks, service marks, trade names, business names, domain names, logos (whether registered or not), patents, inventions, registered and unregistered design rights, copyrights (including rights in computer software), typography rights, data base rights, goodwill and the right to sue for passing off, rights in performances, rights to preserve the confidentiality of information (including know-how and trade secrets) and all other similar proprietary rights which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registration and all similar property rights which may subsist anywhere in the world.

"KYTE POWERTECH" means Kyte Powertech Limited, a company incorporated and registered in Ireland with registered company number 57687 and whose registered office is at Dublin Road, Co. Cavan, Ireland.

"Order" means an offer by the Purchaser to purchase Equipment at the price indicated on the applicable Quotation subject to these Conditions.

"Order Acknowledgement" means written acknowledgement by KYTE POWERTECH of acceptance of an Order.

"Purchaser" means the person or firm who purchases the Equipment from KYTE POWERTECH, as specified in the Order.

"Quotation" means a quotation of a price for the supply of specified Equipment on the terms of these Conditions by KYTE POWERTECH. For the avoidance of doubt, a Quotation is an invitation to treat only and is not capable of being accepted by the Purchaser.

"Specification" means the specification of the Equipment provided by the Purchaser to KYTE POWERTECH.

1.2. Headings are for reference only and shall not affect the interpretation or construction of these Conditions.

1.3. Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.

1.4. Any lists or examples following the word including, include or in particular or any similar expression shall be interpreted without limitation to the generality of the preceding words.

2. GENERAL

2.1. These Conditions apply to the Order to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, including any terms set out on order forms, invoices, notices or in any other medium, and Purchaser hereby irrevocably undertakes not to seek or purport to rely on any such other terms or conditions.²

2.2. A Quotation for Equipment given by KYTE POWERTECH shall not constitute an offer. Unless otherwise stated in the Quotation, the price quoted in a Quotation shall only be valid for [1 month].³ The Purchaser may offer to purchase Equipment at the price quoted by sending a written Order to KYTE POWERTECH.

2.3. The Purchaser is responsible for ensuring that the terms of the Order are complete and accurate. Orders are subject to final approval and acceptance by KYTE POWERTECH.

2.4. An Order shall only be deemed to be accepted when KYTE POWERTECH issues an Order Acknowledgement, at which point a Contract shall come into existence.

2.5. These Conditions and the Contract constitute the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of KYTE POWERTECH which is not set out in the Contract.

2.6. Any samples, drawings, descriptive matter or advertising produced by KYTE POWERTECH and any descriptions or illustrations contained in KYTE POWERTECH's website, catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract or have any contractual force.

2.7. The Purchaser warrants and confirms that, for the purposes of these Conditions and the Contract, it is acting in a business capacity related to its trade, business, craft and/or profession.

3. PRICES AND PAYMENT

3.1. The price of the Equipment shall be the price set out in the Order, or if no price is quoted, the price set out in the published price list as at the date of Delivery.

3.2. [Packing as per KYTE POWERTECH's standard export packing, suitable for transport to the place of Delivery and handling in good conditions, is included in the prices].⁴

3.3. [The following items are not included in the price: costs for witnessed inspection, type tests or special tests, storage of the Equipment after delivery Ex Works (Incoterms 2020), or any other cost beyond the specified delivery condition, such as supervision of erection, testing and/or commissioning on site. Any present or future custom duties, taxes, levies, port charges, entry fees or similar charges, levied outside of Ireland and related to the supply of the Equipment are not included in the price. The Purchaser shall be liable for these charges to the extent any are applicable].⁵

3.4. All sums due under the Contract shall be paid in Euro (€).⁶ Unless otherwise stated in the contract

4. PAYMENT TERMS

4.1. KYTE POWERTECH shall use its commercially reasonable efforts to issue an invoice for the full amount due in respect of Equipment ordered under a given Order within [30 Business Days]⁷ of the Order Acknowledgement.

4.2. Unless otherwise stated in the Order, the Purchaser shall pay the invoice as follows:

4.2.1. 100% of the invoiced amount shall be paid upon the agreed Incoterm being realised.⁸

4.3. If the Purchaser should fail to make payment by the due date for payment, then without limiting KYTE POWERTECH's other remedies under the Contract, the outstanding payments shall bear interest at the rate of 8% per annum above the core refinancing rate of the European Central Bank from time to time, from the contractually agreed payment date and without any notice to this effect being required from KYTE POWERTECH.

5. DELIVERY

5.1. Unless otherwise expressly agreed upon in an Order, Equipment shall be delivered Ex Works (Incoterms 2020).

5.2. Time of Delivery (or making Equipment available for Delivery, as applicable) is not of the essence. The Purchaser shall use its reasonable endeavours to meet specified Delivery dates but such dates are approximate only.

5.3. The Purchaser shall not be liable for any delay in or failure of Delivery (or making Equipment available for Delivery, as applicable) caused by:

5.3.1. the Purchaser's failure to (i) make the Purchaser's premises available or otherwise prepare the Purchaser's premises for Delivery, (ii) provide the Purchaser with adequate instructions for Delivery or (iii) otherwise prepare for Delivery; or

5.3.2. a Force Majeure Event.

5.4. If the Purchaser fails to accept or effect Delivery of the Equipment the Purchaser shall store the Equipment pending Delivery, and the Purchaser shall pay all costs and expenses incurred by the Purchaser in doing so.

6. TRANSFER OF RISK AND TITLE

6.1. The transfer of risk of loss or damage shall be Ex Works (Incoterms 2020), unless expressly agreed otherwise on the Order. The Purchaser shall notify KYTE POWERTECH promptly of any claim with respect to loss which occurs while KYTE POWERTECH has the risk of loss, and of which the Purchaser has knowledge, and shall cooperate in every reasonable way to facilitate the settlement of any claim.

6.2. In all circumstances, title to the Equipment shall not pass to the Purchaser until KYTE POWERTECH receives payment in full (in cash or cleared funds) for the Equipment in respect of which payment has become due by the Purchaser, in which case title to the Equipment shall pass at the time of payment of all such sums. The retention of title shall not affect the transfer of risk under the present clause.

6.3. [Until title to the Equipment has passed to the Purchaser, the Purchaser shall:

6.3.1. not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;

6.3.2. maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;

6.3.3. notify KYTE POWERTECH immediately if it becomes subject to any of the events listed in clause 11; and

6.3.4. give KYTE POWERTECH such information relating to the Equipment as KYTE POWERTECH may reasonably require from time to time].⁹

6.4. If before title to the Equipment passes to the Purchaser the Purchaser becomes subject to any of the events listed in clause 11, then, without limiting any other right or remedy KYTE POWERTECH may have:

6.4.1. the Purchaser's right to resell the Equipment or use them in the ordinary course of its business ceases immediately; and

6.4.2. KYTE POWERTECH may at any time: (i) require the Purchaser to deliver up all Equipment in its possession and (ii) if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Equipment are stored in order to recover them.

6.5. The Purchaser grants to KYTE POWERTECH an irrevocable licence for KYTE POWERTECH, its agents and employees to enter any premises where the goods of the Purchaser are stored to ascertain whether any Equipment are stored there and to inspect, count and recover them.

7. SUPPLY OF EQUIPMENT

7.1. [KYTE POWERTECH shall inspect the Equipment and submit it to standard tests at its own premises (unless agreed otherwise in the Order before Delivery). The Purchaser may require additional tests or attend (or send its representative to attend) the tests at its own cost, provided that the Purchaser notifies KYTE POWERTECH at least 60 Business Days in advance of the designated testing date. If the Purchaser or the Purchaser's Representative do not attend on the notified testing date, KYTE POWERTECH may proceed with the testing

¹ WF Note: We have inserted this to give KYTE POWERTECH flexibility in this regard. References to such a manual should be removed if no such manual is provided.

² WF Note: We note that previous wording allowed for other terms to apply "if otherwise agreed in writing." We are excluding this to place KYTE POWERTECH in as strong a position as possible in a "battle of the forms" scenario.

³ WF Note: Please insert an appropriate timeframe here.

⁴ WF Note: We have retained this language from the original draft provided. Please remove if it is no longer accurate.

⁵ WF Note: As per footnote 4 above.

⁶ WF Note: Please remove this if inaccurate (in which case you will need to ensure that the currency is clearly set out in the Order).

⁷ WF Note: Please insert an appropriate timeframe here.

⁸ WF Note: Please amend if you wish to change this default payment model (which was expressed in the terms provided).

⁹ WF Note: If you intend to use the payment model in clause 4.3 as standard, then we advise you introduce this mechanism to ensure the Purchaser must safeguard the Equipment pending full payment.



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- 7.2. Any dimensions and weights stated in a Quotation are approximate only and do not form part of the Contract.
- 7.3. If drawings or documentation must be approved by the Purchaser so that KYTE POWERTECH can customise Equipment customised according to a specification of the Purchaser, such approvals must reach KYTE POWERTECH within 2 weeks from the date of submittal for approval, failing which the drawings shall be deemed to have been approved.
- 7.4. The Purchaser shall be responsible for errors, omissions, or discrepancies in any specification supplied by the Purchaser or by a third party on the Purchaser's behalf. The Purchaser shall at its own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies for which the Purchaser is responsible or shall pay KYTE POWERTECH the cost incurred by KYTE POWERTECH in carrying out any such alterations or remedial work so necessitated.
- 7.5. All drawings and technical documents relating to the Contract, submitted by one party to the other prior or subsequent to the formation of the Contract, shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any purpose other than the execution of the Contract. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

8. WARRANTY¹¹

- 8.1. KYTE POWERTECH warrants that for a period of [18 months from the date on which the Purchaser is notified that Equipment is ready for Delivery, or 12 months from the date the Equipment is put into use (whichever occurs first)] (the **Warranty Period**)¹², the Equipment shall be free from material defects in design, material and workmanship. A **defect** is a non-conformity with the agreed technical specifications, which has a material negative impact on the function or the performance of the Equipment.
- 8.2. Subject to clause 8.1, if the Purchaser:
 - 8.2.1. gives notice in writing to KYTE POWERTECH during the Warranty Period within [10 Business Days]¹³ of discovery that some or all of the Equipment does not comply with the warranty set out in clause 8.1;
 - 8.2.2. provides KYTE POWERTECH with sufficient information as to the nature and extent of the defect and the use to which the Equipment had been put prior to the defect arising;
 - 8.2.3. follows KYTE POWERTECH's instructions regarding return of the Equipment to KYTE POWERTECH; and
 - 8.2.4. gives KYTE POWERTECH a reasonable opportunity of examining such Equipment,
 KYTE POWERTECH shall, at its sole option, repair (using its best efforts) or replace the defective Equipment or refund the price of the defective Equipment in part or in full. The sole remedy under this warranty shall be the repair, replacement or refund provided for in this clause 8.
- 8.3. KYTE POWERTECH shall not be liable for Equipment's failure to comply with the warranty set out in clause 8.1 in any of the following events:
 - 8.3.1. the Purchaser makes or allows any further use of such Equipment after giving notice in accordance with clause 8.2;
 - 8.3.2. the defect arises because the Purchaser failed to follow KYTE POWERTECH's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment including without limitation as set out in the KYTE POWERTECH Installation and Operation Manual;
 - 8.3.3. the defect arises as a result of KYTE POWERTECH following any specification supplied by the Purchaser;
 - 8.3.4. the Purchaser alters or repairs such Equipment without the prior written consent of KYTE POWERTECH;
 - 8.3.5. the defect arises as a result of normal wear and tear, wilful damage, negligence, abnormal storage or working conditions; or
 - 8.3.6. the Equipment differs from a specification supplied by the Purchaser as a result of changes made to ensure the Equipment complies with applicable statutory or regulatory requirements.
- 8.4. The warranty does not cover defects caused by or resulting in any way from the following:
 - 8.4.1. Purchaser's modifications, misuse, neglect, accident or abuse of the Equipment;
 - 8.4.2. operation with parts or components other than genuine KYTE POWERTECH parts and components or alternatives approved for use in writing by KYTE POWERTECH;
 - 8.4.3. improper cabling, repair, installation, storage and/or maintenance of any kind or where any of same are not carried out by suitably qualified and accredited persons in accordance with applicable local and international standards and codes of practice and in accordance with the requirements and instructions set out in KYTE POWERTECH's Installation and Operation Manual; or
 - 8.4.4. any Force Majeure Event.
- 8.5. For products not manufactured by KYTE POWERTECH itself, KYTE POWERTECH shall only be liable to the extent of the warranty given to KYTE POWERTECH by its own suppliers and for the timeframe set out in that warranty.
- 8.6. For longer warranties (if explicitly agreed in writing by KYTE POWERTECH), the warranty will only remain valid if the Purchaser can prove that he organized a yearly inspection of the Equipment by a qualified expert.
- 8.7. KYTE POWERTECH shall decide whether repair shall be carried out at the site of the Equipment or a defective part shall be returned to KYTE POWERTECH for replacement, or any other solution. No Equipment will be accepted for repair or replacement without the authorization of and in accordance with instructions of KYTE POWERTECH.
- 8.8. If KYTE POWERTECH repairs or replaces such Equipment under this warranty, KYTE POWERTECH shall pay the cost of transportation of the repaired or replaced Equipment. If KYTE POWERTECH determines that the returned Equipment was not defective, Purchaser shall pay KYTE POWERTECH's costs of handling, inspecting, testing and transportation and, if applicable, travel and related expenses. In repairing or replacing any Equipment or part of Equipment under this warranty, KYTE POWERTECH may use either new, remanufactured, reconditioned, refurbished or functionally equivalent products or parts; provided, however, that such repair or replacement will not impact upon the function of the Equipment under normal and proper use, as provided in the specifications. The replaced Equipment or parts shall become property of KYTE POWERTECH. All replaced parts must be returned to KYTE POWERTECH within one month of their replacement, in default of which their value will be invoiced. The repair or replacement of items during the period of warranty does not extend this period.
- 8.9. The Purchaser shall at its own expense arrange for any dismantling and reassembly of

equipment other than Equipment delivered by KYTE POWERTECH, to the extent that this is necessary to remedy a defect.

8.10. The foregoing warranties are exclusive and are in lieu of all other express and implied warranties, including but not limited to warranties of merchantability, fitness for a particular purpose or correspondence with description (whether implied by statute or common law or otherwise), all of which are excluded to the fullest extent permissible by law.

9. LIABILITY

- 9.1. Nothing in these Conditions shall limit or exclude KYTE POWERTECH's liability for any matter in respect of which it would be unlawful for KYTE POWERTECH to exclude or restrict liability.
- 9.2. The Purchaser's exclusive remedy for defects in Equipment shall be as set out in clause 8.
- 9.3. Subject to clause 9.1 KYTE POWERTECH shall not be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
 - 9.3.1. any loss, damage or injury caused from any hazard inherent in the nature of the Equipment;
 - 9.3.2. any loss of goodwill, profit, revenue, or anticipated savings;
 - 9.3.3. loss of, or damage to, data or information systems;
 - 9.3.4. loss of contract or business opportunities;
 - 9.3.5. damage to reputation;
 - 9.3.6. costs of substitute equipment;
 - 9.3.7. loss related to loss of operational use of machinery or other equipment;
 - 9.3.8. physical loss or damage (in whole or in part) of or to machinery or Equipment; or
 - 9.3.9. any indirect, special or consequential loss or damage,
 in any case, whether or not such losses were within the contemplation of the parties at the date of the Contract or were suffered or incurred by that party arising out of or in connection with the provisions of the Contract or any matter arising under it.
- 9.4. The aggregate liability of KYTE POWERTECH in respect of any loss or damage suffered by the Purchaser and arising out of or in connection with this Contract, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the price paid for the Equipment which gave rise to the claim.¹⁴

10. FORCE MAJEURE

- 10.1. Either Party shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by a Force Majeure Event but in no case shall payments for delivered Equipment be interrupted due to a Force Majeure Event.
- 10.2. In the event KYTE POWERTECH is prevented from fulfilling its obligations under the Contract by a Force Majeure Event, KYTE POWERTECH shall not be liable for any loss, damage, failure or delay in fulfilling its obligations and may, at its option, extend the time of delivery of the Equipment or, should the Force Majeure Event persist, re-negotiate or cancel unconditionally the unfulfilled portion of the Contract. The corresponding obligations of the Purchaser will be suspended, and time for performance of such obligations extended, to the same extent as those of KYTE POWERTECH.
- 10.3. KYTE POWERTECH shall notify the Purchaser in due time of any Force Majeure Event affecting its performance and may extend Delivery times accordingly.

11. SUSPENSION AND TERMINATION OF CONTRACT

- 11.1. KYTE POWERTECH may terminate the Contract with immediate effect by giving written notice to the Purchaser if the Purchaser:
 - 11.1.1. defaults in any of its payment obligations under the Contract;
 - 11.1.2. commits a material breach of the Contract and (if the breach is remediable) fails to remedy such breach within 14 days after receipt of notice in writing to do so;
 - 11.1.3. suspends, ceases or threatens to suspend or cease to do business;
 - 11.1.4. becomes unable to pay its debts as they fall due (within the meaning of Section 570 of the Companies Act 2014);
 - 11.1.5. becomes or is deemed to be insolvent;
 - 11.1.6. has a receiver, manager, examiner, administrator, administrative receiver or similar officer appointed in respect of the whole or any parts of its assets or business;
 - 11.1.7. makes any composition or arrangement with its creditors;
 - 11.1.8. takes or suffers any similar action in consequence of debt;
 - 11.1.9. has an order or resolution made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction to which the Purchaser has previously agreed in writing);
 - 11.1.10. enters into liquidation (whether compulsory or voluntarily); or
 - 11.1.11. suffers or undergoes any process analogous to the above, whether in Ireland or in any other jurisdiction.
- 11.2. Without limiting its other rights or remedies, KYTE POWERTECH may suspend provision of the Equipment or any of its other obligations under the Contract if the Purchaser becomes subject to any of the events listed in clause 12.1, or KYTE POWERTECH reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment. If KYTE POWERTECH exercises this right then all corresponding obligations of both parties shall be suspended accordingly.
- 11.3. On termination of the Contract for any reason the Purchaser shall immediately pay to KYTE POWERTECH all of KYTE POWERTECH's outstanding unpaid invoices and interest.
- 11.4. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 11.5. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. CANCELLATION FOR CONVENIENCE

- 12.1. The Purchaser may [at any time before the date designated for Delivery **OR** within [5] Business Days of placing an Order]¹⁵ amend or cancel an Order by written notice to KYTE POWERTECH. If the Purchaser amends or cancels an Order, charges shall be assessed against the value of the cancelled Equipment in accordance with the following **Cancellation Table**, less any payments received against the value of the Equipment, notwithstanding the right of KYTE POWERTECH to demand full indemnification for any and all damages resulting from this cancellation.

Cancellation Table		
For Distribution transformers up to 10 MVA		
Duration after receipt of an order	But not exceeding	Cancellation charge = % of total contract value

¹⁰ **WF Note:** Please remove if KYTE POWERTECH does not perform testing in this manner.

¹¹ **WF Note:** Please consider the scope and extent of this warranty and whether you would like to narrow or expand its application.

¹² **WF Note:** You should insert appropriate warranty periods here.

¹³ **WF Note:** Please insert an appropriate period here.

¹⁴ **WF Note:** This will likely prove to be one of the main focus points of negotiations by any commercially sophisticated Purchaser. You might consider a higher liability cap appropriate to offset the likelihood of a Purchaser pushing back on this liability cap and thus seeking to open up negotiations generally. Ultimately this is a commercial decision.

¹⁵ **WF Note:** Please select/insert an appropriate timeline here.



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Within 1 week		10
> 1 week	2 weeks	30
> 2 weeks	3 weeks	45
> 3 weeks	4 weeks	60
> 4 weeks	5 weeks	70
> 5 weeks	6 weeks	75
> 6 weeks	7 weeks	80
> 7 weeks	8 weeks	85
> 8 weeks	x - 1 week *	90
Within 1 week prior to shipment		100

For Small power transformers up to 25 MVA/72.5 kV		
Duration after receipt of an order	But not exceeding	Cancellation charge = % of total contract value
Within 4 weeks		10
4 weeks	8 weeks	30
8 weeks	12 weeks	60
12 weeks	16 weeks	75
16 weeks	x - 4 weeks*	85
Within 4 weeks prior to shipment		100

For Power transformers above 25 MVA/72.5 kV		
Duration after receipt of an order	But not exceeding	Cancellation charge = % of total contract value
Within 1 month		10
4 weeks	8 weeks	30
8 weeks	12 weeks	45
12 weeks	16 weeks	60
16 weeks	20 weeks	70
20 weeks	24 weeks	75
24 weeks	28 weeks	80
28 weeks	32 weeks	85
32 weeks	x - 4 weeks*	90
Within 4 weeks prior to shipment		100

* x = delivery time in weeks

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. The Purchaser acknowledges that KYTE POWERTECH is the absolute owner of KYTE POWERTECH's Intellectual Property Rights including in particular its Intellectual Property Rights in its Equipment, documentation and Installation and Operation Manual and the Purchaser shall not assert or attempt to assert any rights in relation to KYTE POWERTECH's Intellectual Property Rights. KYTE POWERTECH shall not be liable for claims arising from an infringement of third-party Intellectual Property Rights.
- 13.2. The Purchaser shall not use or exploit KYTE POWERTECH's Intellectual Property Rights, and in no circumstance shall the Purchaser reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile, or reverse engineer any of KYTE POWERTECH's Intellectual Property Rights.
- 13.3. The Purchaser shall indemnify KYTE POWERTECH and keep KYTE POWERTECH indemnified from and against all claims, damage, losses, costs (including all reasonable legal costs), expenses, demands or liabilities arising out of or in connection with any claim alleging that KYTE POWERTECH has infringed the Intellectual Property Rights of a third party in supplying the Equipment in accordance with the Purchaser's instructions or to a specification provided by the Purchaser.

14. CONFIDENTIALITY

- 14.1. Subject to clause 15.2, each party shall:
 - 14.1.1. not use any Confidential Information for any purpose other than in the performance of its obligations under this Contract;
 - 14.1.2. not disclose any Confidential Information to any person except with the prior written consent of the disclosing party or in accordance with Clause 18.2; and
 - 14.1.3. make every effort to prevent the use or disclosure of Confidential Information.
- 14.2. The Receiving Party may disclose information which would otherwise be Confidential Information if and to the extent that:
 - 14.2.1. it is required by law or regulation to which the Receiving Party is subject;
 - 14.2.2. the information has come into the public domain, otherwise than through a breach of this clause by the Receiving Party;
 - 14.2.3. it is in the possession of a Receiving Party without restriction in relation to disclosure before the date of receipt from the Disclosing Party;
 - 14.2.4. it is independently developed without access to Confidential Information;

- 14.2.5. is released from the provisions of this clause 15 by the prior written consent of the Disclosing Party; or
- 14.2.6. the disclosure is to its professional advisers or auditors, or to any of its directors, board members, other officers or employees or sub-contractors to the extent that disclosure is reasonably necessary for the purposes of the Contract and provided the Receiving Party shall ensure that any such recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under the Contract as if the recipient was a party to the Contract.

15. NOTICE

- 15.1. Any notice required to be given under these Conditions shall be in writing and shall be delivered by hand or sent by registered post or recorded delivery post to the relevant party at its registered office or such other address as may have been notified by that party for such purposes.

16. LICENSES, PERMITS, LAWS AND REGULATIONS

- 16.1. The Purchaser shall be responsible for obtaining any licenses, permits and approvals in due time as necessary for the performance of the Contract and the Purchaser's use or resale of the Equipment. Failure to obtain any necessary licenses, permits and approvals in a timely manner may result in adjustment of Delivery times and costs or termination of the Contract at the sole discretion of KYTE POWERTECH.
- 16.2. Where the Equipment is to be exported from Ireland the Purchaser shall be responsible for complying with any local legislation or regulations governing the importation of the Equipment and for the payment of all applicable duties, taxes and other levies of whatever nature and notifying KYTE POWERTECH of any relevant laws applicable to the Equipment in the country/(ies) to which they will be exported and/or used.
- 16.3. All local laws, rules and regulations that are applicable to the Equipment, its operation or its assembly, in the country where the Equipment must be delivered and/or assembled, shall be deemed to be known by the Purchaser, who shall incorporate all necessary elements in a specification in the Order.

17. ASSIGNMENT AND SUB-CONTRACTING

- 17.1. KYTE POWERTECH may assign the benefit of this Contract in whole or in part without the prior written consent of the Purchaser.
- 17.2. The Purchaser may not assign the benefit of this Agreement in whole or in part without the prior written consent of KYTE POWERTECH.

18. ENTIRE AGREEMENT

- 18.1. The Contract constitutes the entire contract between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

19. VARIATION

- 19.1. No variation of these Terms and Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. SEVERANCE

- 20.1. If any provision or part-provision of these Conditions becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Conditions.

21. WAIVER

- 21.1. No failure of a party to exercise and no delay or neglect by a party in exercising any right shall operate or be deemed to be a waiver of such right, nor shall any single or partial exercise of any right preclude any other or further exercise of such right or the exercise of any other rights.
- 21.2. Any waiver of a party of any breach of these Conditions shall not be deemed to be a waiver by that party of any subsequent breach.

22. RIGHTS AND REMEDIES

- 22.1. The rights and remedies provided under these Conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

23. CONFLICT

- 23.1. If there is an inconsistency between any of the provisions in these Conditions and any Order, the provisions in these Conditions shall prevail.

24. GOVERNING LAW AND JURISDICTION

- 24.1. The Contract and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of Ireland.
- 24.2. All disputes or claims arising out of or in connection with the Contract (including those regarding its validity and termination), shall be subject to the exclusive jurisdiction of the courts of Ireland, to which the parties irrevocably submit.