

QUIETREVOLUTION LIMITED

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY, INSTALLATION AND COMMISSIONING OF QUIETREVOLUTION QR5 VERTICAL AXIS WIND TURBINE[S] WITH ASSOCIATED MAST AND CONTROLS PER GRID CONNECTION (JUNE 2008 SDv1) WITHOUT DESIGN WORK

The Buyer hereby acknowledges that:

For the purposes of section 12 of the Unfair Contract Terms Act 1977 the Buyer's attention is in particular drawn to the provisions of Conditions 5.6, 13.2 and 13.4.

1. Interpretation

1.1 In this Agreement:

- Accepted Order Sheet** means the Order Sheet signed and accepted by the Buyer and received back by the Seller;
- Agreement** means any agreement between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;
- Approved Sub-Contractor** means a person, firm or company chosen and approved by the Seller to carry out the installation of the Goods or any design and preparation works required prior to the installation of the Goods;
- Background Intellectual Property** means any Intellectual Property, other than Foreground Intellectual Property;
- Buyer** means the person, firm or company who purchases the Goods from the Seller;
- Delivery Address** means the place where delivery of the Goods and/or Services is to take place under Condition 4 (Price and Payment);
- Foreground Intellectual Property** means any Intellectual Property that arises or is obtained or developed by, or on behalf of, the Seller in respect of the subject matter of the Agreement;
- Goods** means the quietrevolution wind turbine products, attachments and fittings described in the Order Sheet to be supplied to the Buyer by the Seller and which shall be subject to these terms and conditions;
- Site Inspection Visit** means the attendance of a representative of the Seller or of an Approved Sub-Contractor at the Site to physically inspect the Site and to undertake an evaluation of any preparations or works undertaken at the Site by the Buyer in order to confirm Site Readiness;
- Intellectual Property** means any patent, registered design, copyright, database right, design right, topography right, trade mark, service mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world;
- Order Sheet** means the order form detailing the Goods and/or Services to be provided to the Buyer by the Seller as sent by the Seller to the Buyer to be signed and returned by the Buyer to the Seller together with payment;
- Physical Conditions** means natural physical conditions and manmade and other physical obstructions and pollutants which the Seller encounters at the Site when executing the Works Programme, including sub-surface, hydrological conditions and climatic conditions

	present at the Site;
Preparation Works	means the carrying out of any requirements or specifications relating to the Site Design;
Seller	means Quiet Revolution Limited (Company number 5405104) whose registered office is at 1.12 Clerkenwell Workshops, 31 Clerkenwell Close, London EC1R 0AU;
Services	means any design, ground work, installation or other services described in the Order Sheet to be provided to the Buyer by the Seller and which shall be subject to these terms and conditions;
Site	means the physical location at which the Goods shall be installed and commissioned;
Site Design	means the design of or technical specifications relating to any groundwork, roof mounting work or health and safety obligations required at the Site in order to prepare the Site for installation and commissioning of the Goods at the Site;
Site Readiness	means the preparation of the Site in order to ensure accurate and safe installation and commissioning of the Goods and includes (but is not limited to) the built foundations, studding; cable containment; lightning protection and three phase electrical supply at the Site all being accurately and safely in place in accordance with the specifications of the Seller;
Specification	means any plans, drawings, data or other information relating to the Goods but excluding the full specification Technical Design Documents;
Stage	means the timeframe and works procedures specifically required to be carried out under the Works Programme;
Technical Design Documents	means the detailed specifications that would be required for the manufacture, sourcing or assembly of replacement parts;
Unforeseeable	means not reasonably foreseeable by an experienced seller and installer of the type of Goods sold under this Agreement; and
Works Programme	means the programme and time schedule relating to any design or construction works or the provision of any services by the Seller for the supply, installation and commissioning of the Goods.

1.2 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 legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 Any reference to one gender includes a reference to the other gender.

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

2. Application of Terms

2.1 Subject to any variation under Condition 2.3 the Agreement shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Agreement simply as a result of such document being referred to in the Agreement.
- 2.3 These conditions apply to all the Seller's sales and any variation to these conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Agreement. Nothing in this Condition 2.3 shall exclude or limit the Seller's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods and/or Services by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods and/or Services subject to these conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Seller until the receipt of the Accepted Order Sheet by the Seller or (if earlier) the Seller delivers the Goods or performs the Services to the Buyer.
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification it provides are complete and accurate.
- 2.7 Any quotation is given on the basis that no Agreement shall come into existence until the Seller has despatched an Order Sheet to the Buyer and then has received back an Accepted Order Sheet from the Buyer.

3. Specifications and Safety

- 3.1 The quantity, quality and description of the Goods and/or Services shall, subject as provided in these Conditions, be as specified in the Seller's quotation or Order Sheet and/or in any applicable Specification supplied by the Buyer and confirmed by the Seller. All samples, drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services represented by or described in them. They will not form part of the Agreement and this is not a sale by sample.
- 3.2 The Seller will comply with all applicable regulations or other legal requirements in the production, manufacturing, packaging, packing and delivery of the Goods and all current requirements of the Health & Safety at Work Act 1974 as amended from time to time, along with other Acts of Parliament, notes, orders or regulations of any competent authority dealing with matters of safety, health and welfare.
- 3.3 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to dispatch, and the Seller shall provide the Buyer with all reasonable facilities required for inspection and testing. Such inspection and testing of the Goods shall be allowed on any nominated Tuesday afternoon subject to the Seller receiving at least 72 hours' prior notice.
- 3.4 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Agreement, and the Buyer so informs the Seller within 7 days of inspection or testing, the Seller shall then take such steps as are necessary to ensure compliance.
- 3.5 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4. Price and Payment

- 4.1 The Seller shall supply the Goods and/or the Services to the Buyer to the reasonable satisfaction of the Buyer in consideration of which the Buyer shall pay the Seller in full the price stated on the Purchase Order unless otherwise agreed by the Seller in writing.
- 4.2 The price for the Goods and/or Services shall be exclusive of any applicable value added tax (VAT) and all costs or charges in relation to packaging, unloading, and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods and/or Services.

- 4.3 Orders for the Goods and/or Services will not be accepted by the Seller unless and until an Accepted Order Sheet is received in writing.
- 4.4 The Goods shall only become reserved for the Buyer after receipt by the Seller of a deposit equal to 40% of the total value of the Goods and/or Services covered by the Order. This deposit is considered to be non-refundable, and any requests for refund will be granted solely at the Seller's discretion. 40% of the total value of the Goods and/or Services will become due and payable on the mutually agreed date of delivery of the Goods and/or Services to the Buyer.
- 4.5 Should the subsequent date of installation be amended by the Buyer 40% of the total value of the Goods and/or Services shall continue to fall due on the originally agreed date of delivery. The balance of 20% of the total value of the Goods and/or Services shall become due and payable on the actual date of installation and commissioning of the Goods. The final date for payment shall be 30 days after the commissioning of the Goods.
- 4.6 For the avoidance of doubt completion will be deemed to take place when the Goods have been installed, commissioned, and signature of the Client Acceptance sheet has been made by the Buyer or the Buyer's representative on site.
- 4.7 The Seller may at any time suspend the provision of the Goods and/or Services if the Buyer is late in making any payment due to the Seller.
- 4.8 The Order may only be varied where the Buyer provides to the Seller in writing a revised order amending the terms of the Accepted Order Sheet. Where such a variation is received, the Seller shall within 21 days submit in writing to the Buyer an acceptance of such variation including confirmation of any adjustment in price or Works Programme arising out of such variation.
- 4.9 The Seller may invoice the Buyer for any outstanding price of the Goods and/or Services (which price shall then become immediately due and payable) on or at any time after delivery of the Goods and/or Services (or when the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods) in each case where applicable at any time after the Seller has either notified the Buyer that the Goods are ready for collection or has tendered delivery of the Goods (as the case may be);
- 4.10 No payment shall be deemed to have been received until the Seller has received cleared funds. Payments must be made in UK Pounds Sterling to the Seller's nominated Bank or by company cheque. Bank account details and swift code for bank transfers are available on request. The Buyer must pay all bank transfer charges.
- 4.11 All payments payable to the Seller under the Agreement shall become due immediately on its termination despite any other provision.
- 4.12 The Buyer shall make all payments due under the Agreement in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 4.13 If the Buyer fails to pay the Seller any sum due pursuant to the Agreement, the Buyer shall be liable to pay interest to the Seller on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of National Westminster Bank, accruing on a daily basis until payment is made, whether before or after any judgment. In addition and without limiting any other rights or remedy available to it, the Seller may cancel the Agreement and suspend any deliveries to the Buyer.

5. Delivery

- 5.1 Delivery of the Goods and/or Services shall take place at the Buyer's site address specified on the Order Sheet. The Buyer shall accept delivery of the Goods immediately upon delivery to the address specified in the Order Sheet. The delivery charge indicated on the quotation or Order Sheet (as the case may be) will apply.
- 5.2 The Buyer may alter the delivery date by giving the Seller at least 14 days notice of an alternative delivery date. The Seller will notify the Buyer of any increase or decrease in the delivery charge accordingly.
- 5.3 Should the Buyer give less than 14 days notice to the Seller of a change in the delivery date the Seller reserves the right to charge the Buyer for any costs incurred through such change of date.

- 5.4 Where the Buyer amends the date of delivery without giving at least 14 days notice to the Seller any due date for payment by the Buyer in accordance with Condition 4.3 shall remain unchanged by any such subsequent variation of the date of delivery.
- 5.5 Any dates specified by the Seller for delivery of the Goods and/or Services are intended to be the Seller's best estimate however the date and time for delivery of the Goods and/or Services are not of the essence to the Agreement. If no dates are so specified, delivery shall be within a reasonable time.
- 5.6 Subject to the other provisions of these conditions the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of business opportunity, loss of production, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or Services (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Agreement.
- 5.7 If for any reason the Buyer fails to accept delivery of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 5.7.1 the Buyer shall be responsible for the costs of any subsequent return of the Goods to the Seller;
 - 5.7.2 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);
 - 5.7.3 the Goods shall be deemed to have been delivered; and
 - 5.7.4 the Seller may store the Goods until subsequent delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) for any period of storage over 2 months.
- 5.8 Upon delivery to the Delivery Address the Seller shall provide for a two hour off-loading and inspection period. The Buyer shall be required to confirm the quantity and quality of the Goods delivered and shall be entitled to reject any Goods delivered which are not in accordance with the Agreement. Should the Buyer not reject the Goods during this period he will be deemed to have approved and accepted the Goods as according with the specification supplied by the Seller.
- 5.9 The Seller shall supply the Buyer in good time after commissioning of the Goods with the Operating and Maintenance Manuals for the Goods and any other instructions or other information required to enable the Buyer to accept delivery of the Goods. The Seller is to issue 2 copies of all such relevant manufacturers' Literature and Operating and Maintenance instructions to the Buyer.

6. Non-Delivery

- 6.1 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 6.2 The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless the Buyer gives written notice to the Seller of the non-delivery within seven days of the date when the Goods would in the ordinary course of events have been received.
- 6.3 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro-rata Agreement rate against any invoice raised for such Goods.

7. Risk and Title

- 7.1 Risk and title shall pass from the Seller to the Buyer following installation and commissioning of the Goods and the signing of the Customer Acceptance Sheet by a duly authorised representative of the Buyer.

- 7.2 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 7.2.1 hold the Goods on a fiduciary basis as the Seller's bailee;
 - 7.2.2 store the Goods separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
 - 7.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 7.2.4 maintain the Goods in a satisfactory and secure condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.
- 7.3 Until ownership of the Goods has passed to the Buyer the Buyer's right to possession of the Goods shall terminate immediately if:
- 7.3.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - 7.3.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Agreement or any other agreement between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 7.3.3 the Buyer encumbers or in any way charges any of the Goods.
- 7.4 Until ownership of the Goods has passed to the Buyer, the Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are located or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 7.5 On termination of the Agreement, howsoever caused, the Seller's rights contained in this Condition 7 (Risk and Title) shall remain in effect.

8. Unforeseeable Physical Conditions

- 8.1 If at any time during the term of this Agreement the Seller encounters Physical Conditions at the Site which in its reasonable opinion it considers to be Unforeseeable, it shall immediately give notice to the Buyer of such conditions.
- 8.2 Should the Seller suffer delay and/or incurs costs due to such Unforeseeable conditions and providing it has notified the Buyer under Condition 8.1 above, the Seller shall be entitled to a reasonable extension of time for any such delay (as agreed between the Parties), if the delivery, installation or commissioning is or will be delayed, and the Buyer shall pay to the Seller any costs thereby incurred by the Seller arising from such delay.
- 8.3 Where a design has been specified by the Buyer, the Seller shall reserve the right to stop the Site Design, the Preparation Works and/or the Works Programme and revise the costs of the Site Design, the Preparation Works and/or the Works Programme where any Unforeseeable ground conditions are encountered at site.

9. Works Programme

- 9.1 Unless otherwise agreed in writing and detailed on the Order Sheet, the Buyer shall be responsible for all foundations, site design works, steelworks and any other preparation of the site required in order for the Seller to install and commission the Goods. The Buyer hereby agrees to prepare the site in accordance with the Seller's reasonable installation requirements and instructions.
- 9.2 The Works Programme shall consist of two Stages and shall commence upon the Buyer giving the Seller at least 4 weeks written notice of the required date for inspection of the site.
- 9.3 Stage 1 shall consist of a pre-start Site Inspection Visit where the Seller will inspect the site for Site Readiness. During Stage 1 if the Seller determines that the site is not ready it will issue a report to the Buyer detailing the remedial works to be carried out by the Buyer at the Buyer's expense. The Buyer shall reimburse the Seller for all costs arising out of additional Site Inspections and any cancellation fees incurred as a result of the site not being ready on the agreed delivery date.
- 9.4 Stage 2 shall only commence upon successful completion of Stage 1. Stage 2 will consist of the booking of resources by the Seller and confirmation of the exact date of delivery for installation and commissioning of the Goods.
- 9.5 The installation and commissioning to occur in Stage 2 are required to be executed concurrently. If for any reason the Seller is not allowed to commission the Goods concurrently with the installation, the Buyer must either nominate a new date for commissioning within a 7 day period following the initial installation of the Goods or send the Goods to Storage at the Buyer's cost. Should the Seller have to return to commission the Goods on a new date then any additional costs shall be borne by the Buyer to be advised by the Seller. If the Seller is not able to commission the Goods within this period and the Buyer does not send the Goods to storage any and all warranties and guarantees given by the Seller relating to the Goods shall become void and unenforceable.
- 9.6 Where the Buyer elects to store the Goods in accordance with Condition 9.5 the Seller shall store the Goods off-site for a period of up to 2 months following any such non-commissioning without charge to the Buyer if so requested. The Buyer shall pay the Seller reasonable storage fees to be notified to the Buyer for any storage period in excess of this initial period.
- 9.7 Where the Buyer decides not to have the Seller inspect the site in accordance with Stage 1, the Buyer accepts full responsibility for checking that the site has been prepared in order to conform to the requirements of Site Readiness. Should the site not fully conform to the requirements of Site Readiness the Buyer will be required to undertake remedial works at the Buyer's cost. The Buyer shall reimburse the Seller for all costs arising out of additional site visits and any cancellation fees incurred as a result of the site not conforming to the Seller's installation requirements.
- 9.8 If it becomes apparent that as a result of any act or omission of the Buyer, completion of the Works Programme is or is likely to be delayed, the Seller shall notify the Buyer and, provided that the Seller shall have so requested in writing giving reasons, the Buyer shall amend the Works Programme completion date.
- 9.9 The Buyer shall be responsible for all lightning protection design and installation for the Goods being in place prior to installation of the Goods. The Goods shall be lightning protected from anemometer to base and the Seller shall be responsible for connecting the Goods into an existing lightning protection scheme. The Seller shall bear no responsibility for the design or testing of such lightning protection scheme but shall reserve the right to postpone the installation of the Goods should it believe in its reasonable opinion that the existing lightning protection scheme for the Goods is inadequate or unsafe. Installation shall be postponed until the Buyer has rectified the faults in the existing lightning protection at its own cost. For the avoidance of doubt, nothing in this Condition 9.9 will create any additional obligations on the Seller to comment to the Buyer on the adequacy of the design of the lightning protection.
- 9.10 As soon as the Goods have been installed and have been connected to the agreed electrical supply or battery array, then (at the time of installation) the Seller will present a Customer Acceptance Sheet to the Buyer for an authorised representative of the Buyer to sign. Signature of the Acceptance Sheet by the Buyer shall represent acceptance by the Buyer of the completion of the installation of the Goods. Such signature of the Seller's Acceptance Sheet shall not be unreasonably withheld or delayed by the Buyer.

- 9.11 In the event that on any agreed upon date for installation and/or commissioning of the Goods the weather conditions are inclement (including but not limited to winds speeds in excess of Beaufort 5 (9.8 m/s) – (19.24 knots) and in the Seller’s view such conditions will adversely affect its ability to deliver, install and commission the Goods safely and successfully, then:
- 9.11.1 the Seller will inform the Buyer at the earliest opportunity and the delivery and installation of the Goods will be postponed;
 - 9.11.2 the Seller will propose to the Buyer the next possible dates for the Delivery of the Goods; and
 - 9.11.3 the Seller will not be responsible for any costs incurred by the Buyer as a result of the change in delivery date due to inclement weather conditions.

10. Site Design and/or Preparation Works

- 10.1 The requirements of this Condition 10 (Site Design and/or Preparation Works) are applicable in the event that as agreed on the Order Sheet between the Seller and the Buyer, the Seller has contracted with the Buyer to undertake some or all of the site design, ground works, foundations or roof mounting required to prepare the agreed site for the installation and commissioning of the Goods.
- 10.2 In accordance with the requirements set out in the Seller site feasibility study referenced on the Order Sheet, the Seller shall be responsible for the provision of the foundations, site design, ground works, roof mounting and any other preparation of the site required in order for the Seller or the Buyer to install the Goods (hereinafter referred to as the site Design and/or Preparation Works).
- 10.3 The Site Design and/or Preparation Works shall be provided by the Seller in accordance with the Site Design and/or Preparation Works quotation referenced on the Order Sheet and within the timescales referenced therein.
- 10.4 The Seller will provide all necessary materials, equipment and labour required to complete the Site Design and/or Preparation Works, unless otherwise agreed in writing with the Buyer.
- 10.5 The Seller reserves the right to sub-contract all or part of the Site Design and/or Preparation Works to one of its Approved Sub-Contractors.
- 10.6 Where the Buyer provides any soil reports for the site, the Seller will base the Site Design on the Buyer’s report. The Buyer accepts full responsibility for the accuracy of the soil reports and the Seller shall have no liability howsoever arising for verifying soil reports and/or ground conditions upon which the Site Design was based.
- 10.7 In the event that the Buyer prevents access to the agreed site by the Seller or its Approved Sub-Contractors thereby preventing commencement of the Site Design and/or Preparation Works on the agreed date, or for installation and/or commissioning on the agreed date, the Seller will no longer guarantee installation and/or commissioning of the Goods on the agreed date in the Order Sheet. The Seller shall not be liable for any loss howsoever arising because of non-installation of the Goods on the agreed date under this Condition 10.6.
- 10.8 In the event of any delay in the commencement of the Site Design and/or Preparation Works as a result of Condition 10.6 the Buyer will reimburse the Seller any cancellation fees or costs arising out of such delay of the Site Design and/or Preparation Works.
- 10.9 Subsequent to Condition 10.6 as soon as the Buyer informs the Seller it can access the site and proceed with the Site Design and/or Preparation Works, then the Seller will advise the Buyer of the next available date for commencement of the Site Design and/or Preparation Works and any impact to the agreed date for installation and/or commissioning of the Goods.

11. Warranty

- 11.1 Where the Seller is not the manufacturer of the Goods, the Seller shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.

- 11.2 The Seller warrants that (subject to the other provisions of these conditions) upon delivery, and for a period of 24 months from the date of delivery the Goods shall:
- 11.2.1 conform with their specification at the time of delivery; and
 - 11.2.2 be free from defects in material or workmanship.
- 11.3 The Seller shall not be liable for a breach of any of the warranties in Condition 11.2 unless:
- 11.3.1 the subsequent installation and commissioning of the Goods is undertaken by the Seller or an Approved Sub-Contractor;
 - 11.3.2 the wind turbine(s) is/are commissioned within seven days of the final day of installation of the Goods;
 - 11.3.3 between 10 and 14 months from the date of delivery of the Goods, an annual inspection of the Goods is undertaken by the Seller or an Approved Sub-Contractor;
 - 11.3.4 the Buyer gives written notice of the defect to the Seller within seven days of the date on which the Buyer discovers or ought to have discovered the defect; and
 - 11.3.5 the Seller is either given a reasonable opportunity after receiving such notice of examining the Goods at the installation point or the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost for the examination to take place there. If as a result of such inspection and in the Seller's reasonable opinion the defect was caused by circumstances as set out in Condition 11.4, then the Buyer shall promptly reimburse the Seller's costs of either examining the Goods at the installation point or returning the Goods for inspection at the Seller's place of business (as the case may be).
- 11.4 The Seller shall not be liable for a breach of any of the warranties in Condition 11.2 if:
- 11.4.1 the Buyer makes any further use of such Goods after giving such notice; or
 - 11.4.2 the defect arises because the Buyer failed to follow the Seller's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good industry practice, or the Goods are misused; or
 - 11.4.3 the Buyer fails to take reasonable care of the Goods; or
 - 11.4.4 the Buyer or any person acting at the direction of the Buyer alters, adjusts or repairs such Goods without the prior written consent of the Seller.
- 11.5 Subject to Conditions 11.3 and 11.4, if any of the Goods do not conform with any of the warranties in Condition 11.2 the Seller shall at its option repair or replace such Goods (or the defective part) within a reasonable time provided that, if the Seller so requests, the Buyer shall, at the Seller's expense, return the Goods or the part of such Goods which is defective to the Seller. Any Goods replaced shall belong to the Seller and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 24 month period.
- 11.6 If the Seller complies with Condition 11.5 it shall have no further liability for a breach of any of the warranties in Condition 11.2 in respect of such Goods.

12. Support and Optimisation

- 12.1 The Seller will use reasonable endeavours to provide to the Buyer a remote support service during normal business hours over the telephone or by electronic mail only with reasonable response times for a period of six months from delivery of the Goods
- 12.2 During the 24 month warranty period as set out in Condition 7.5 (Works Programme) only the Seller may alter or replace parts of the Goods as part of any ongoing optimisation of the Goods which the Seller decides to

undertake. The Buyer agrees to grant to the Seller a right of access on reasonable notice to the installed Goods. Unless agreed otherwise in writing with the Buyer such optimisation works will be at the Seller's cost.

13. Limitation of Liability

13.1 Subject to Conditions 11.3 and 11.4, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

13.1.1 any breach of these conditions;

13.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

13.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.

13.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Agreement. In particular and without limitation the Seller gives no warranty as to:

13.2.1 the amount of energy to be produced by the Goods;

13.2.2 the noise levels resulting from the operation of the Goods; or

13.2.3 the performance of the Goods under extreme or unusual conditions including without limitation extreme high or low temperatures or salt water erosion.

13.3 Nothing in these conditions excludes or limits the liability of the Seller:

13.3.1 for death or personal injury caused by the Seller's negligence; or

13.3.2 under section 2(3), Consumer Protection Act 1987; or

13.3.3 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or

13.3.4 for fraud or fraudulent misrepresentation.

13.4 Subject to Conditions 13.2 and 13.3:

13.4.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the total value of the Goods covered by the Order;

13.4.2 the Seller shall not be liable to the Buyer for any economic loss, loss of profit, loss of business, business opportunity or revenue, loss of savings, any loss of energy or power (including electricity) production, costs in sourcing and/or arranging for any substitute energy or power (including electricity) suppliers, depletion of goodwill or otherwise, lost or wasted management time or time of other employees, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Agreement; and

13.4.3 without limitation to the generality of this Condition 13, the Seller shall not be liable for any damage to property and/or ground settlement resulting from the use and/or installation of the Goods. The Buyer is advised to seek advice as to the suitability of the Goods from a structural engineer in the case of a roof installation or civil engineer in the case of a ground installation.

14. Intellectual property

- 14.1 The design of the quietrevolution QR5 Vertical Axis Wind Turbine is a registered design with UK registered Patents and 'quietrevolution' is a UK registered trademark and the Buyer acknowledges that the Seller (and/or its third party licensors) are the owners of Background Intellectual Property in the Goods. Accordingly nothing in the Agreement shall be construed so as to transfer any such Intellectual Property ownership rights whatsoever to the Buyer which remain vested in the Seller (or its third party licensors) nor shall the Agreement be construed as a licence of any Background Intellectual Property in the Goods. The Buyer shall not make or distribute copies of the Goods.
- 14.2 For the avoidance of doubt, all Foreground Intellectual Property shall vest in and be owned absolutely by the Seller and nothing in the Agreement shall be construed as to transfer such ownership rights to the Buyer nor shall the Agreement be construed as a licence of any Foreground Intellectual Property.

15. Assignment and Sub-Contracting

- 15.1 The Seller may assign the Agreement or any part of it, or sub-contract its performance to any person, firm or company.
- 15.2 The Buyer shall not be entitled to assign the Agreement or any part of it without the prior written consent of the Seller.

16. Force Majeure

- 16.1 The Seller will not be liable to the Buyer or be deemed to be in breach of the Agreement for any failure or delay or for the consequences of any failure or delay in performance of the Agreement, if it is due to any event beyond the reasonable control and contemplation of the Seller including, but without limitation:
- 16.1.1 Acts of God, explosion, flood, fire, tempest or accident;
 - 16.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 16.1.3 import or export regulations or embargoes;
 - 16.1.4 acts, restrictions, regulations, bye-law, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; and
 - 16.1.5 strikes, lock-outs or any other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), protests, acts of terrorism and national emergencies.
- 16.2 On the occurrence of any such event specified in Condition 16.1 the Seller will be entitled to a reasonable extension of time for performing such obligations as to be mutually agreed between the parties.

17. Termination

- 17.1 The Buyer or the Seller shall be entitled to terminate the Agreement without liability to the other Party by giving notice to the other Party at any time if either the Buyer or the Seller makes any voluntary agreement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or the Buyer or the Seller ceases, or threatens to cease, to carry on business; or the Buyer or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the other Party and the other Party subsequently confirms this in writing to the Buyer or the Seller.
- 17.2 The termination of the Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either the Buyer or the Seller accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.

18. Communications

- 18.1 All communications between the parties relating to the terms of this Agreement shall be in writing and delivered by hand or sent by pre-paid first class post, facsimile, or by electronic mail:
- 18.1.1 in case of communications to the Seller to its registered office or such changed address as shall be notified to the Buyer by the Seller; or
- 18.1.2 in the case of the communications to the Buyer to the registered office of the addressee (if it is a company), site office, or (in any other case) to any address of the Buyer set out in any document which forms part of the Agreement or such other address as shall be notified to the Seller by the Buyer.
- 18.2 Communications shall be deemed to have been received on the day of delivery if given by hand, two working days after having been sent by first class pre-paid post, and one working day after being sent if sent by electronic mail or facsimile transmission (confirming the same by post) to the address of the other party as set out in the Agreement unless the sender has received a transmission or delivery error message in respect of a facsimile or electronic mail communication.

19. Adjudication

- 19.1 Any dispute arising under or in connection with this Agreement may be referred to adjudication. A decision of the adjudicator in relation to any dispute shall be binding on all Parties to this Agreement. If any party does not comply with the decision of the adjudicator the other party or parties shall be entitled to take proceedings in the Courts to secure such compliance.
- 19.2 A party to this Agreement (the "**Referring Party**") may at any time give notice (the "**Notice**") in writing to the other party of its intention to refer a dispute arising under the Agreement to adjudication.
- 19.3 The parties shall mutually agree the identity of the adjudicator.
- 19.4 Where an adjudicator is not agreed within 2 days of the Notice being given the Referring Party shall immediately apply to the President or Vice-President for the time being of the Royal Institution of Chartered Surveyors, for the nomination of an adjudicator, which nomination shall be communicated to the parties within 5 days of receipt of the application.
- 19.5 Within 7 days of the Notice the Referring Party shall refer the dispute to the adjudicator.
- 19.6 If the Adjudicator dies or becomes ill or is unavailable for some other cause and is thus unable to adjudicate on a dispute or difference referred to him, the Parties may either agree upon an individual to replace the Adjudicator or either Party may reapply to the President or Vice-President for the time being of the Royal Institution of Chartered Surveyors for the appointment of a new Adjudicator.
- 19.7 The adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred.
- 19.8 The adjudicator may extend the period of 28 days by up to 7 days, with the consent of the party by whom the dispute was referred.
- 19.9 The adjudicator shall act impartially.
- 19.10 The adjudicator may take the initiative in ascertaining the facts and the law.
- 19.11 The parties shall be free to negotiate an agreement to the dispute at any time prior to the decision of the adjudicator.
- 19.12 The decision of the adjudicator shall be final and binding.

19.13 The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the adjudicator is similarly protected from liability.

20. General

20.1 Each right or remedy of the Seller under the Agreement is without prejudice to any other right or remedy of the Seller whether under the Agreement or not.

20.2 If any provision of the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.

20.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Agreement shall not be construed as a waiver of any of its rights under the Agreement.

20.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Agreement by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Agreement.

20.5 The parties to this Agreement do not intend that any term of the Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

20.6 Where the Goods are resold, then the Buyer will to the extent permitted by law defend and indemnify the Seller from any and all claims brought against the Seller by third parties, and the Buyer shall hold the Seller harmless from all damages, liabilities, costs and expenses, (including reasonable lawyers fees) incurred by the Seller arising out of or in connection with the Buyer's possession, use, sale or distribution of the Goods.

20.7 The Seller and the Buyer hereby agree to grant to the Seller an irrevocable royalty free licence to use any pictures, videos or other electronic or multimedia created by the Seller relating to the installed Goods at the Site for its own promotional or other commercial purposes and without seeking prior approval of the Buyer.

21. Governing Law and Jurisdiction

21.1 This Agreement is subject in all respects to English law and the Courts of England shall have exclusive jurisdiction to settle any dispute arising from or connected with this Agreement (a "**Dispute**"), including a Dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity.