



Standard Commercial Terms and Conditions of Sale

FCT-Combustion Inc. - EIN 23-3031647

FCT Combustão Brasil Importação e Exportação Ltda. CNPJ26.182.529/0001-67

1. General Terms and Conditions.

- a) These terms and conditions of sale (these "Terms") are the only terms which govern the sale of the goods ("Goods") and services ("Services") by FCT-Combustion, Inc. and/or FCT Combustão Brasil Importação e Exportação Ltda or any associated or subsidiary companies hereinafter referred to as the "Supplier"
- b) The Customer purchasing services or goods ("Customer") and Buyer, are collectively referred as ("Parties").
- c) Any variation to these Terms must be mutually agreed upon, in writing, by both Parties.
- d) The accompanying quote and/or proposal (the "Purchase Order") and these Terms comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms supersede any other general terms and conditions of purchase regardless whether or when Customer has submitted its purchase order or such terms, unless amended by a signed written agreement from both parties' legal representatives.
- e) Notwithstanding anything to the contrary contained in this Agreement, Supplier may, from time to time change the Services without the consent of the Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.

2. Commencement of Agreement.

Unless stated otherwise and agreed by both parties in writing, the commencement date of the contract shall be determined from the latest of

- a) Five (5) business days from receipt of Customer Purchase Order and advance payment and consequent written confirmation from Supplier that Customer Purchase Order is accepted; or
- b) the date on which Supplier's bankers notify Supplier that all confirmed irrevocable documentary letters of credit, in accordance with payment terms hereof have been established by the Customer; or



- c) confirmation of receipt of all necessary technical and application data from Customer; or
- d) receipt of the Customer Purchase Order and consequent written confirmation from Supplier that Customer Purchase Order is accepted; or
- e) confirmation by Customer of approved engineering designs and drawings,

provided that acceptance of Supplier's offer is on the basis of the terms and conditions offered in Supplier's Purchase Order including any changes agreed to in writing prior to the date of acceptance.

3. Completion of Scope of Work.

- a) Supplier shall complete the entire Scope of Work within the time schedule specified as provided in the Purchase Order.
- b) Completion of all work under this Contract will be deemed to have occurred when Supplier's specialist completes the commissioning work requirements as detailed in the Purchase Order.

4. Price and Payment Terms.

- a) Customer shall purchase the Goods and Services from Supplier at the price (the "Price") set forth in the Purchase Order. If the Price should be increased by Supplier before delivery of the Goods to a carrier for shipment to Customer, Customer shall be billed by Supplier on the basis of such increased price.
- b) If not specifically provided in the Purchase Order, terms of payment shall be as follows:
 - i. Equipment:
 - 1. 20% with placement of Purchase Order
 - 2. 20% on completion of engineering and design and approved GAs
 - 3. 30% on placement of orders with main sub-contractors/sub-Suppliers of Equipment
 - 4. 25% upon delivery of Goods (delivery is subject to payment the outstanding balances on Customer's invoices as per this Section 4(b)(i) 1-4 herein)
 - 5. 5% on successful commissioning or 26 (twenty-six) weeks following delivery, whichever occurs first.
 - ii. Services:
 - 1. If the charge(s) provided in the Purchase Order is/are on a lump-sum basis, the terms of payment will be as defined in the Purchase Order.
 - 2. If the charge(s) provided are on an hourly/daily/weekly/monthly rate basis, then, unless this Agreement provides to the contrary, the Price shall be payable in monthly instalments in arrears calculated from the date the Scope of Work commences or each engineer leaves the base office as defined in the Agreement, whichever occurs first. All other costs and expenses reimbursable by the Customer to the Supplier under these Conditions shall be payable within fourteen (14) days of receipt of an invoice.



- c) The Customer must pay interest on all amounts not paid by the due date at the higher of:
 - i. the annual interest rate applicable to the Supplier's overdraft account plus 5% per annum; and 18% per annum or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse Supplier for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Supplier does not waive by the exercise of any rights hereunder), Supplier shall be entitled to suspend the delivery of any Goods or performance of any Services, if Customer fails to pay any amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.
- d) The Price quoted in the Purchase Order excludes all taxes (federal, state, municipal or other governmental), imposts, duties, levies and other similar costs whether incurred by Supplier or Supplier's agents in connection to the Customer's Scope of Work within the US or in transit between any other country of manufacture and the Customer's project site. Such costs shall be borne by the Customer, unless specifically included as part of the Price.
- e) The costs of on-site accommodation and transport of personnel, air fares, freight of materials, equipment and samples, insurance, site preparation work which may be incurred by Supplier in the Customer's project country or in transit between the country of manufacture and the Customer's project site or within the country of manufacture is excluded from the contract price and shall be borne by the Customer, unless specifically included as part of the Price.

5. Letter of Credit.

Unless otherwise agreed, an irrevocable confirmed at sight documentary letter of credit issued by a reputable bank accepted by the Supplier allowing for telegraphic transfer reimbursement will be required from the Customer as a mandatory condition to this Agreement.

6. Delivery of Goods and Performance of Services.

- a) The Goods will be delivered pursuant to this Agreement or within a reasonable time after the receipt of the Customer's Purchase Order, subject to availability of finished Goods. Supplier shall not be liable for any delays, loss, or damage in transit.
- b) Unless otherwise agreed in writing by the parties, Supplier shall cause the delivery of the Goods to Customer's preferred delivery point (the "Delivery Point") pursuant to the Purchase Order using Supplier's standard methods for packaging and shipping such Goods. Customer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point and will unload and release all transportation equipment promptly so Supplier incurs no demurrage or other expense.
- c) If for any reason Customer fails to accept delivery of any of the Goods on the date fixed pursuant to Supplier's notice that the Goods have been delivered at the Delivery Point, or if Supplier is unable to deliver the Goods at the Delivery Point on such date because Customer



- has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Customer; (ii) the Goods shall be deemed to have been delivered; and (iii) Supplier, at its option, may store the Goods until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- d) Supplier shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only.
 - e) With respect to the Services, Customer shall (i) cooperate with Supplier in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Supplier, for the purposes of performing the Services; (ii) respond promptly to any Supplier request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Supplier to perform Services in accordance with the requirements of this Agreement; (iii) provide customer materials or information as Supplier may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.
 - f) All goods shall be packed in a commercially reasonable manner consistent with industry standards. Large items or boxes shall be suitably lugged, battened or packed to allow loading and unloading. Miscellaneous small items shall be packed in containers suitable for appropriate handling and storage. All packages shall be clearly identified. Customer shall properly receive and properly store the goods while they await installation or commissioning by Supplier. Customer shall handle certain items with the requisite care, handling and storage in an enclosed and controlled warehouse.
 - g) All packaging that's not Supplier's Standard will be charged at a separate fee to be determined depending on the complexity requested by the Customer.
 - h) The exclusive remedy of Customer against Supplier and the sole measure of recoverable damage by Customer for any delay in the delivery of the materials, Supplier shall be liable only for direct damages caused by the breach in an amount not to exceed (5%) of the contract item price.

7. Title and Risk of Loss.

Title and risk of loss passes to Customer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Customer hereby grants to Supplier a lien on and security interest in and to all of the right, title, and interest of Customer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing, provided, that title to any software incorporated within or forming a part of the Goods shall at all times remain with Supplier or the licensor(s) thereof, as the case may be. Customer acknowledges and agrees that this document or copies of this document may be filed with the appropriate



authorities as a financing statement and agrees to execute and deliver such other documents as Supplier may request in order to evidence or perfect such security interest. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code.

8. Limited Warranty.

- a) Supplier warrants to Customer that for a period of eighteen (18) months from the date of shipment of the Goods or for a period of twelve (12) months from the date of completion of equipment commissioning, whichever is earlier ("Warranty Period"), such Goods and Services will be free from material defects in material and workmanship.
- b) Supplier warrants to Customer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
- c) EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 8(a) AND 8(b), SUPPLIER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; and (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
- d) Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 8(a). For the avoidance of doubt, SUPPLIER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
- e) The Supplier shall not be liable for a breach of the warranties set forth in Section 8(a) and Section 8(b) unless: (i) Customer gives written notice of the defective Goods or Services, as the case may be, reasonably described, to Supplier within fifteen (15) days of the time when Customer discovers or ought to have discovered the defect; (ii) if applicable, Supplier is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 8(a) to examine such Goods and Customer (if requested to do so by Supplier) returns such Goods to Supplier's place of business at Supplier's cost for the examination to take place there; and (iii) Supplier reasonably verifies Customer's claim that the Goods or Services are defective.
- f) The Supplier shall not be liable for a breach of the warranty set forth in Section 8(a) or Section 8(b) if: (i) Customer makes any further use of such Goods after giving such notice; (ii) the defect arises because Customer failed to follow Supplier's oral or written instructions as to the

storage, installation, commissioning, use or maintenance of the Goods; or (iii) Customer alters or repairs such Goods without the prior written consent of Supplier.

- g) Subject to Section 8(e) and Section 8(f) above, with respect to any such Goods during the Warranty Period, Supplier shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate not to exceed ten per cent (10%) of the sums actually received by Supplier, provided that, if Supplier so requests, Customer shall, at Supplier's expense, return such Goods to Supplier.
- h) Subject to Section 8(e) and Section 8(f) above, with respect to any Services subject to a claim under the warranty set forth in Section 8(b), Supplier shall, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata Agreement rate not to exceed the amounts set forth herein. Supplier shall be liable only for direct damages caused by the breach in an amount not to exceed ten per cent (10%) of the sums actually received by Supplier hereunder.
- i) THE REMEDIES SET FORTH IN SECTIONS 8(G) AND 8(H) SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SUPPLIER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTIONS 8(A) AND 8(B), RESPECTIVELY.
- j) For the avoidance of doubt, this warranty does not apply to (i) replacement or repairs which are required as a result of negligent use, improper installation by others, maladjustment, modification or lack of routine maintenance, (ii) any items considered to be of consumable nature, i.e. all items listed as "Consumables" and including any other such parts susceptible to wear and tear, e.g. face plates, hoses, rubber and plastic pipes/tubes, impellers, fans, filters, nozzles, liners, etc., (iii) any form of surface coating, e.g. rubber lining, paint coatings, etc., (iv) any normal wear and tear, or (v) any products subject to neglect, improper use or any alteration, repair or replacement made without Suppliers prior written approval.
- k) Any goods that are supplied under replacement shall be supplied at Customer's headquarter or other Supplier's nominated location. Customer is liable and shall pay for all associated freight, insurance, taxes, imposts, duties and levies concerning such replacements or repairs.
- l) Erection, installation, manpower and any other resources and direct or indirect costs or expenses to substitute the defective parts are not covered by this exclusive limited warranty.

9. Intellectual Property and Royalties

- a) Supplier shall at its sole expense hold harmless the Customer from and against, and shall defend, any suit or proceeding brought against the Customer based on a claim that the manufacture, use or sale of any goods supplied under the Purchase Order constitutes infringement of any patent, copyright, trademark or proprietary information rights of others in the country of manufacture, the jurisdiction of this Agreement or the United States of America, and Supplier shall pay all damages and costs awarded therein against the Customer. Supplier shall be notified promptly in writing of any such suit or proceeding and shall be given adequate authority, information and assistance (at Supplier's expense) for the exclusive defense of same, subject to the right of the Customer to be advised by Supplier in advance of developments in such action. In the event the goods are held in such suit to constitute



infringement and the sale or use of the goods are enjoined, Supplier shall, at its own expense, either procure for the Customer the right to sell and use the goods or replace same with substantially equal but non-infringing goods, or modify the goods so they become substantially equal to but non-infringing; or if approved by the Customer remove the goods and refund the purchased price and the transportation and installation costs thereof, less a reasonable use fee.

- b) The preceding paragraph shall not apply to any goods manufactured, designed and/or required by the Customer nor shall it apply to claims that the sale or use of a process or use of a combination of any goods supplied by Supplier hereunder with any other process or equipment infringes a patent, if such process or other equipment was not supplied by Supplier and Supplier's supplying of the goods does not constitute contributory patent infringement.
- c) All payments for royalties or fees in respect of letters of patent, registered designs, trademarks or names, copyright or other protected rights due or payable for or in connection with any matter or thing used or required to be used in connection with the supply of the goods and/or work covered by the Purchase Order, whether payable in one sum or instalments or otherwise, shall be deemed to have been included by Supplier in the price payable by the Customer hereunder and shall be paid by Supplier those to whom they may be due or payable.
- d) Supplier shall have no liability under this Section to the extent any such Indemnified Items are caused by either (i) the negligence or willful misconduct of Customer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of a Goods in combination with equipment or software not supplied by Supplier where the Goods would not itself be infringing, (iv) compliance with Customer's designs, specifications or instructions, (v) use of the Goods in an application or environment for which it was not designed or (vi) modifications of the Goods by anyone other than Supplier without Supplier's prior written approval. Customer shall provide Supplier prompt written notice of any third party claim covered by Supplier's indemnification obligations hereunder. Supplier shall have the right to assume exclusive control of the defense of such claim or, at the option of the Supplier, to settle the same. Customer agrees to cooperate reasonably with Supplier in connection with the performance by Supplier of its obligations in this Section.
- e) Notwithstanding the above, Supplier's infringement related indemnification obligations shall be extinguished and relieved if Supplier, at its discretion and at its own expense (a) procures for Customer the right, at no additional expense to Customer, to continue using the Goods; (b) replaces or modifies the Goods so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Goods; or (c) in the event (a) and (b) are not practical, refund to Customer the amortized amounts paid by Customer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SUPPLIER'S ENTIRE LIABILITY TO CUSTOMER FOR THE CLAIMS DESCRIBED HEREIN.
- f) By mutual agreement the order may be varied with respect to design, specifications, quantity, model, types, and delivery destination. In such a case, when Customer's new requirements alter in any way his previous Purchase Order, the Supplier shall provide a new quote reflecting the new circumstances. It is understood that any new quote can cause an increase or



decrease in the price of the equipment or in the lead-time required for delivering the goods. By committing to the new order issued, the Supplier shall promptly notify the Customer by issuing a new Sales Order Confirmation reflecting both Customer's new requests and Supplier's new capabilities under the changed circumstances.

- g) In any event, changes shall not be binding upon nor be put into effect by either party unless confirmed in writing by its appropriate representative.
- h) Unless otherwise agreed in writing the copyright of all engineering, drawings, reports, documents, software and information produced by Supplier is vested in Supplier, and the Customer's right to their use is restricted wholly to the purpose for which the Services are provided pursuant to this Agreement, and no part of the engineering, drawings, reports, documents, software and information may be used for other purposes without Supplier's written consent. Further, all right, title and interest in and to any work product, including, but not limited to, any engineering, drawings, reports, drawings, photographs, data and specifications, whether stored on paper, computer disks or otherwise, software programs, derivative works, discovery, invention, patent, know-how or improvement (collectively, the "Work Product") which may be conceived, created or developed as a result of or in connection with the Goods and/or Services, shall be the sole property of Supplier.
- i) Subject to the terms and conditions of this Agreement, Supplier shall grant a non-exclusive, royalty- free, non-transferable license to Customer to use the Work Product for its internal business purposes.

10. Inspection.

- a) Customer shall inspect the Goods upon ten (10) days receipt (" Inspection Period"). Customer will be deemed to have accepted the Goods unless it notifies Supplier in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Supplier. "Nonconforming Goods" means equipment shipped is different than identified in Customer's Purchase Order.
- b) If Customer timely notifies Supplier of any Nonconforming Goods, Supplier shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Customer shall ship, at its expense and risk of loss, the Nonconforming Goods to Supplier's headquarters. If Supplier exercises its option to replace Nonconforming Goods, Supplier shall, after receiving Customer's shipment of Nonconforming Goods, ship to Customer, at Customer's expense and risk of loss, the replaced Goods to the Delivery Point.
- c) Customer acknowledges and agrees that the remedies set forth in Section 10(b) are Customer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Customer are made on a one-way basis and Customer has no right to return Goods purchased under this Agreement to Supplier.
- d) If the Customer requires any inspections or testing other than the Supplier's standard works or site inspections, or inspection or tests in the presence of the Customer's representative, such



inspections or tests must be requested by the Customer in writing, ten (10) days prior to the scheduled date. Supplier shall cause such tests and inspections to occur, but such inspection or tests shall be quoted separately to and paid by the Customer as an additional cost to the Price.

11. Limitation of Liability.

- a) **IN NO EVENT SHALL SUPPLIER BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, LOSS OF GOODWILL OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), DELIVERY DELAYS OF GOODS OR SERVICES, ENGINEERING, INDEMNIFICATION OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
- b) **IN NO EVENT SHALL SUPPLIER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED 10% OF THE TOTAL PURCHASE PRICE THERETOFORE PAID BY CUSTOMER TO SUPPLIER WITH RESPECT TO THE PRODUCTS OR SERVICES GIVING RISE TO SUCH LIABILITY.**
- c) The limitation of liability set forth in Section 11(b) shall not apply to (i) liability resulting from Supplier's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Supplier's acts or omissions.
- d) **Supplier's liabilities shall be deemed to have been wholly discharged and all services concluded whether under the law of contract tort or otherwise at the expiration of three (3) months following the date of issue of the Completion Certificate for the project and the Customer or any persons claiming through or under the Customer shall not be entitled to commence any action or claim against Supplier or any of its employees in respect of this contract after that date.**

12. Insurance.

During the term of this Agreement, the Supplier, at its sole discretion, will obtain and maintain all necessary insurance for the 30 day period after the installation and commission of the equipment or the 60 day period after the installation and commission of the equipment has been provided by Supplier, thereafter Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability), from the date of FCA dispatch, in a sum no less than \$1,000,000.



13. Confidentiality

- a) Neither the Customer, nor Supplier shall disclose to parties outside this Agreement any matter regarding the Scope of Work without the express approval from the other party, and where such disclosure involves any publication or release of written information, the approval shall be in writing between the parties. Such disclosure shall not be deemed to include any transaction undertaken in the legitimate activities under the Agreement or a simple statement by Supplier seeking other projects that this project has been undertaken by Supplier.
- b) Supplier agrees that Supplier's staff involved in the conduct of the Agreement shall not, without the consent of the Customer, disclose any confidential information received from the Customer relevant to the Scope of Work to any third party.

14. Termination.

- a) This Agreement shall be terminated upon the completion of the Scope of Work or at such other time the parties mutually agree to in writing. Upon such termination or cancellation, Supplier shall be entitled to recover from the Customer all its costs, expenses and reasonable charges incurred up to the date of termination and any costs incurred in anticipation of the continuance of the work or the cancellation of any arrangements made, orders placed or the resale of equipment and materials made in anticipation of the continuance of the work.
- b) In addition to any remedies that may be provided under this Agreement, Supplier may terminate this Agreement with immediate effect upon written notice to Customer, if Customer:
 - (a) fails to pay any amount when due under this Agreement and such failure continues for fifteen (15) days after Customer's receipt of written notice of nonpayment;
 - (b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part;
 - or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

15. Cooperation Between Supplier and Customer.

Subject to this Agreement, all information obtained by Supplier relevant to the scope of work will be made available to the Customer during normal hours, and Supplier will communicate to the Customer all information pertinent to the work as it progresses. An authorized representative of the Customer may confer with the appropriate members of the Supplier staff at mutually agreed times for the purpose of providing such assistance in order for Supplier to complete the Scope of Work.

16. Relationship Between Supplier and Customer.

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

17. Sub-contracting.



Supplier reserves the right, at its sole discretion, to sub-contract all or any part of the Scope of Work. Supplier's liability (if any) to the Customer shall be no more than its liability (if any) which it would have had if it had done the work or supplied the services itself.

18. Assignment.

- a) Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Supplier. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.
- b) Irrespective of any assignment, the Supplier will be responsible for all aspects of the Scope of Work including coordination of activities, quality control, contract variations and amendments, financial arrangements and communication of notices etc.

19. Force Majeure.

- a) The Supplier shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Supplier including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of seven (7) days, Supplier shall notify Customer of such event and use all reasonable efforts to fulfil and resume the full performance of its obligations under the Agreement as soon as possible.
- b) The time of performance of the contractual obligations shall be extended by a period or periods of not more than the duration of such force majeure event or events.
- c) If the force majeure event continues beyond ninety (90) day period, the parties to this Agreement shall mutually decide the future course of action.
- d) In the event it is determined that this Agreement is to be terminated, the parties agree to pay or reimburse to the other party any earned or unearned portions of the Price pursuant to the Scope of Work, any outstanding expenses, charges, or costs incurred under the Agreement for the work executed under this Agreement.
- e) Any advance payments received by the Supplier are considered to be the minimum amount earned by the Supplier in the event of termination by the Customer.
- f) Any open LC or Bank Guarantee by the Supplier in favor of the Customer will not be extended as an intent of extending Supplier obligations to Customer.

20. Export Restrictions



- a) U.S. Export Laws and Regulations. Customer acknowledges that each Product and any related software and technology, including documents and other material containing technical data and other information (collectively “Items”), may be subject to export controls of the U.S. government. Such export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the “EAR”), which may restrict the export of Items from the United States and their re-export from other countries. Customer shall comply with the EAR and all other United States laws, regulations, laws, treaties, and agreements relating to the export or re-export of any Item, and without limiting the foregoing, shall not, without first obtaining permission to do so from the appropriate U.S. government agencies, (i) export or re-export any Item into any of those countries listed from time to time in the EAR as countries subject to general embargoes or to any persons who are specially designated nationals of such countries or (ii) export, re-export, distribute or supply any Item to a person if Customer knows that such person intends to export or re-export the Item to any such embargoed country or a national thereof or intends to use or allow others to use the Item for activities related to weapons or their delivery. Customer shall cooperate fully with Supplier in any official or unofficial audit or inspection related to the export control laws or regulations of the U.S. government.
- b) Non-U.S. Approvals. Customer shall obtain and maintain, at its own expense, any non-United States governmental consents, authorizations, approvals, filings, permits, or licenses required for it to export or import any Product or other Item and for each of Customer and Supplier to exercise its rights and to discharge its obligations under this Agreement including, without limitation, all consents of and filings with any non-United States governmental body.
- c) Indemnification. Customer agrees to indemnify and hold Supplier harmless from, or in connection with, any violation of the provisions of this Section by Customer or its employees, consultants, agents, or Customers.

21. Waiver.

No waiver by Supplier of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Supplier. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

22. Severability.

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

23. Disclaimer.

Any reports issued by Supplier are for the specific use of the Customer. Supplier disclaims any liability to a third party who uses the report without Supplier’s written approval.

24. No Third-Party Beneficiaries.



This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

25. Compliance with Law.

Customer shall comply with all applicable laws, regulations, and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Customer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Customer. Customer assumes all responsibility for shipments of Goods requiring any government import clearance. Supplier may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

26. Amendment and Modification.

This Agreement may only be amended or modified in a writing stating specifically that it amends this Agreement and is signed by an authorized representative of each party.

27. Governing Law.

- a) FCT-Combustion Inc. - EIN 23-3031647 - All matters arising out of or relating to these Terms are governed by and construed in accordance with the laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Florida or,
- b) For FCT Combustão Brasil Importação e Exportação Ltda. CNPJ26.182.529/0001-67 - All matters arising out of or relating to these Terms are governed by and construed in accordance with the laws of the Federative Republic of Brazil without giving effect to any choice or conflict of law provision or rule (whether of Federative Republic of Brazil or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Federative Republic of Brazil.

28. Submission to Jurisdiction.

- a) FCT-Combustion Inc. - EIN 23-3031647 - Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Florida in each case located in the City of Fort Lauderdale and County of Broward and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding or;
- b) For FCT Combustão Brasil Importação e Exportação Ltda. CNPJ26.182.529/0001-67 - Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the Federative Republic of Brazil or the courts of the State of São Paulo in each case located in the City of São Paulo and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.



29. Notices.

All notices required or authorized to be given hereunder shall be in writing, delivery confirmation requested, or by personal delivery to Adriano Greco adriano.greco@fctinternational.com