

STANDARD CONTRACT –PROVISION OF EQUIPMENT AND PRODUCT SALES

Terms and Conditions – Equipment and Product Sales

1. Definitions

'The Vendor' means Engineering Power Solutions Ltd, whose registered office is situated at 18 Binchester Court, Stockton on Tees, TS17 5LY.

'The Goods' shall mean any or all of the goods or materials or services, which from time to time the vendor contracts to supply subject to these conditions.

'The Purchaser' means the person, firm or company who places an order with the Vendor or otherwise agrees to buy from the Vendor any of the goods.

2. Application

- 2.1. These conditions shall apply to contracts, whether written or oral, for the sale of Goods by the Vendor.
- 2.2. Any conditions of purchase or other terms provided by the Purchaser shall be of no effect whatsoever nor shall any variation or alteration of these conditions be of any effect unless made in writing and signed on behalf of the Vendor by a director.
- 2.3. No binding contract shall be created by the placing of an order by the Purchaser unless and until the Vendors written acknowledgement of order shall have been posted or delivered or in the event that no such acknowledgement is sent, the date of dispatch of the Goods to the purchaser.

3. Quotations

- 3.1. Any quotation in whatever form given to the Purchaser is given subject to these conditions as an invitation to treat and does not constitute an offer to sell. The validity of any quotation issued by the Vendor shall expire seven (7) days after the date of its issue.

4. Prices

- 4.1. Subject to anything to the contrary contained in any quotation issued by the Vendor, prices for the Goods are as referred to in the Vendor's price list from time to time and, unless otherwise stated, are exclusive of value added tax and any other similar tax. The Vendor reserves the right to alter any of its prices without notice and the relevant list price should be that ruling at the date of acceptance of the Purchasers offer to buy.
- 4.2. Prices quoted, unless otherwise expressly stated in writing by the Vendor, are exclusive of carriage, packing, handling and any insurance charges.
- 4.3. The Purchaser shall have no right of set-off whether statutory or otherwise.
- 4.4. All prices payable must be settled in the currency of the English realm.

5. Payment & Default by Purchaser

- 5.1. Subject to sub-clause 5.2 and 5.3 the Purchaser shall pay the Vendor in full for the Goods within 30 days of the invoice or delivery whichever is the earlier.
- 5.2. In the event that the Purchaser fails to make payment

by the due date or otherwise commits a breach of these conditions, the Vendor may in its absolute discretion and without prejudice to any other rights which it may have:

(i) Suspend all future deliveries or supplies to the Purchaser under the contract in question or under any other contract(s) and/or terminate any such contract(s) without liability upon it part;

(ii) Require payment in advance for any future deliveries;

(iii) (In the case of non payment on or before the due date or on demand as mentioned in sub-clause 5.3 below) Charge interest on the amount due on a day to day basis at the rate of 2% per month compounded quarterly from the time of delivery until the date of actual payment whether before or after judgement.

- 5.3. The Vendor shall also have all rights referred to in paragraph 5.2 hereof (without prejudice to any other rights which it may have) and may demand immediate payment of all sums whether or not due in the event that any distress or execution shall be levied upon any goods of the Purchaser or if the Purchaser offers to make any arrangement with its creditors or commits an act of bankruptcy or if a petition in bankruptcy be presented against the Purchaser or if any resolution or petition to wind up the Purchaser (other than for the purpose of amalgamation or reconstruction without insolvency) shall be presented or passed or if any petition for an administration order is presented or if a receiver or manager shall be appointed over the whole or any part of the Purchaser's business.

6. Delivery

- 6.1. Delivery will be made by the Vendor at its works in the United Kingdom but for the convenience of the Purchaser it will, if requested, endeavour to arrange an agent for the Purchaser but at the purchasers expense for the carriage of the Goods to a destination specified by the Purchaser and (if so required and at the Purchaser's expense) for their insurance.
- 6.2. Whatever delivery takes place it will be the Purchasers responsibility to provide any necessary machinery and labour to off-load the goods and to ensure delivery can take place at the agreed time and place. The Purchaser shall be liable to indemnify the Vendor for any loss or expense incurred as a result of a breach of these obligations. Without prejudice to the a foregoing if the Vendor agrees to provide labour for the loading free of charge then the Vendor will not be liable for any loss or damage howsoever arising through any act, omission or negligence of any of its employees.
- 6.3. Although given in good faith, delivery times for the supply of Goods specified by the Vendor in its quotation or otherwise are intended as estimates only and are not therefore to be treated as being of the essence of the contract or binding on the Vendor.

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The Vendor will not be liable to the Purchaser for any loss or damage (direct or indirect) occasioned by it failure (whether as a result of its negligence or otherwise) to deliver the Goods by the date or within the time stated and in no case shall delay be a ground for rejecting the same.

- 6.4. The right to deliver any part or parts of the Goods when they become available is expressly reserved by the Vendor and these conditions shall apply to any such part or parts mutatis mutandis.
- 6.5. It is the Purchasers responsibility to check that materials are correct and in good condition at the time of receipt. Claims for deficiencies of any nature will not be considered after delivery has been accepted and transport notes signed accordingly.
- 6.6. Engineering Power Solutions Ltd will aim to collect any excess drums (Supplied by Engineering Power Solutions Ltd) within 10-15 working days from notice of requiring a collection. Please note that this is not a guaranteed service and should events beyond our control effect the collection (Force majeure, weather, accidents, space on vehicles), please see point 11.5 in relation to liability.

7. Risk

- 7.1. In the event that the Goods are to be delivered by the Vendor to a place nominated by the Purchaser, the risk therein shall pass to the Purchaser at the time they are dispatched with the carrier for delivery.
- 7.2. In the event that the Goods are to be collected by or on behalf of the Purchaser from the Vendors works, the risk therein shall pass to the Purchaser when the Purchaser takes control of the Goods which will be taken to be the time at which the delivery advice note is signed as received in the absence of evidence to the contrary.

8. Cancellation

- 8.1. The Vendor shall be under no obligation whatsoever to accept any cancellation of an order once accepted nor any return of the Goods once dispatched, However, if the Vendor at its complete discretion agrees to accept any such cancellation or return, it may levy such charges as it, in its absolute discretion, sees fit.

9. Title

- 9.1. The provision of this clause shall apply until such time as the price of the Goods have been paid in full or until payment has been made of all other sums owing to the Vendor at the date of this contract on any account whatsoever arising whichever occurrence shall be the latter.
- 9.2. The property of the Goods shall remain with the Vendor and the Purchaser shall hold the Goods as fiduciary agent and bailee for the Vendor.
- 9.3. The Purchaser shall store the Goods in such a manner that they can be identified as the property of the Vendor and shall ensure that the Goods are not incorporated in or mixed in or used as part of other Goods.
- 9.4. Subject to sub-clauses 9.3, 9.5 and 9.6 the Purchaser shall be at liberty to sell or use the Goods in the ordinary course of it business and the Vendor

grants the Purchaser a licence for this purpose.

- 9.5. The Purchaser shall account to the Vendor for the proceeds of any sale of the Goods, whether sold on their own or in conjunction with other goods and until such account is made the Purchaser will hold the proceeds of sale upon trust for the Vendor. The Purchaser shall ensure any monies received for the Goods are not mixed with other monies or paid into any overdrawn bank account.
- 9.6. The power of sale given to the Purchaser by sub-clause 9.4 above will automatically terminate if the Purchaser goes into receivership or if a petition is prepared for its winding up or passes a resolution for voluntary winding up or if a petition for an administration order is presented or (if applicable) bankruptcy. Further the Vendor may terminate the said power of sale at any time by written notice if the Purchaser is in default of payment of any sum due to the Vendor of the licence given by the Vendor.
- 9.7. At any time after termination pursuant to 9.6 above, the Vendor may repossess the Goods and the Purchaser hereby grants to the Vendor an irrevocable licence to enter upon the premises of the Purchaser for the purpose of so doing.
- 9.8. The Vendor shall be entitled to appropriate any payment made by the Purchaser in settlement of such invoices or accounts as the Vendor in its absolute discretion thinks fit notwithstanding any purported appropriate to the contrary by the Purchaser.
- 9.9. Each of the foregoing sub-clauses shall, so far as the context permits, be read and construed independently of the other sub-clauses so that if one or more of them shall be held to be invalid this shall not affect the validity of the remaining sub-clauses.

10. Warranty

- 10.1. The Vendor warrants it has title of the Goods and right to sell the same.
- 10.2. No representation or warranty is given as to the suitability or fitness of the Goods for any purpose and the Purchaser shall satisfy itself in this respect and shall be totally responsible therefore.

11. Exclusion of Liability

- 11.1. The Vendor shall be under no liability whatsoever for any defect in, failure of, or unsuitability for any purpose of the Goods or any part thereof whether the same be due to the act of omission, negligence or default of the Vendor or its servants or agents, and all conditions, warrants and other terms whether expressed or implied statutory or otherwise, inconsistent with the provisions of this condition are hereby expressly excluded provided that nothing herein contained shall be construed as excluding or restricting the liability of the Vendor for death or personal injury resulting from the negligence of the Vendor.
- 11.2. Where the Purchaser deals as a consumer within the meaning of that expression as defined in Section 12 of the Unfair Contract Terms Act 1977 none of the statutory rights of the Purchaser are excluded by these terms, conditions and the statutory rights of the Purchaser in the case of a consumer shall remain in

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full force and effect and are in no way affected by any of the provisions of these terms and conditions.

11.3. In no circumstances, shall the Vendor be liable for any loss or damage suffered by the Purchaser of the following nature however caused and whether foreseeable or contemplatable:-

(i) Economic loss which shall include loss of profits, business revenue, goodwill and anticipated saving.

(ii) Any claim made against the Purchaser by any third party.

11.4. Each of the Foregoing sub-clauses shall, so far as the context permits, be read and construed independently of the other sub-clauses so that if one or more of them shall be held to be invalid this shall not affect the validity of the remaining sub-clauses.

11.5. Engineering Power Solutions Ltd will not be held liable for any costs relating to collection of drums within or outside of the collection time scale (please refer to point 6.6)

12. Patent Infringement

12.1. The Vendor warrants only that the Goods themselves will not infringe any patent rights published (at the date of the contract) in the United Kingdom and the Vendor shall indemnify the Purchaser against damage and costs awarded for any such infringement provided that:

(a) This indemnity shall not apply to any infringement which is due to the Vendor having followed any instructions or plans given by the Purchaser or to the use such goods in a manner or for a purpose of in a foreign country not specified or disclosed to the Vendor.

(b) This indemnity is conditional upon the Purchaser giving to the Vendor the earliest possible notice in writing of any claim being made or action threatened against the Purchaser and upon the Purchaser permitting the Vendor to conduct any litigation that may ensue and all the negotiations for settlement of the claim.

12.2. The Purchaser warrants that any instructions or plans furnished or given by it shall not be such as will cause the Vendor to infringe any letters, patent, copyright, registered design, right of confidence or trade mark in execution of the Purchaser's order and agrees to indemnify the Vendor against all claims, costs or other expenses incurred by the Vendor in respect thereof.

13. General Lien

13.1. The Vendor shall have a general lien over all goods of the Purchaser in its possession for all monies due to the Vendor or liabilities incurred by the Vendor upon whatever account shall also be entitled to apply any monies of the Purchaser held by one contract to the discharge of monies due to it under any other contract. The Vendor shall be entitled to charge rent and other expenses incurred during all periods, which a lien on goods is being asserted. Further, if the Vendor exercises its right of lien over any goods then if monies due are not paid within one month after it has first retained such goods or if the circumstances mentioned in clause 5.3 arise, the Vendor shall have

the power, without giving notice, to sell the whole or part of such goods to cover the monies due and expenses of sale.

13.2. For the avoidance of doubt it is hereby declared that nothing in this clause shall affect the rights given to the Vendor by sections 38-48 of the Sale of Goods Act 1979.

14. Catalogues, Advertisements & Drawings etc

14.1. Whilst the Vendor believes that all specifications, illustrations, performance data and other information contained in any drawings, catalogues and advertisements are as accurate as reasonable possible, they do not constitute a description of the Goods, shall not be taken to be representations made by the vendor and are not warranted to be accurate.

14.2. The copyright in all matters referred to in paragraph 12.1 above shall at all times remain vested in the Vendor and the Purchaser shall not reproduce or use any of them without the Vendor's prior written consent.

14.3. Any sample seen by the Purchaser is simply an indication of what attributes the bulk should have, no warranty or representation is given or may be implied that the bulk will be identical to the sample in any attribute.

15. Alterations & Modifications

15.1. The Vendor may carry out from time to time and without prior notice to the Purchaser alterations or improvements in construction or design, specification, materials or manner of manufacture of the Goods.

16. Defacing of the Goods

16.1. The Purchaser shall not deface, tamper with or remove in all or part any trade mark, logo or insignia which may be embossed upon or affixed to the Goods (nor affix any other trade mark, logo or insignia thereon) without prior consent of the Vendor and shall not otherwise deface and/or interfere with, alter or modify any of the Goods.

17. Instructions for Use and Installation

17.1. The purchaser will comply with such instructions for use and installation in respect of the Goods as may be issued by the Vendor from time to time and will install the Goods using competent tradesman in accordance with generally accepted levels of good practice.

18. Force Majeure

18.1. Without prejudice to the generality of any of the foregoing conditions the Vendor shall not be liable for any loss or damage caused by the non-performance or delay in the performance of any of its obligations hereunder if the same is occasioned by any cause whatsoever which is beyond the Vendor's control, including but not limited to Acts of God, war, civil disturbances, requisitioning, import or export regulations, strike, lock-out or trade dispute, difficulties in obtaining materials, breakdown of machinery, fire or accident. Should any such event occur the Vendor may cancel or suspend this contract without incurring any liability for any loss or damage thereby occasioned.



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19. Notices

- 19.1. Any notice required to be served pursuant to these conditions shall be served as follows:-
- 19.2. Notices to the Vendor: to its office, or such other address as it may from time to time notify to the Purchaser;
- 19.3. Notices to the Purchaser: to such address as the Purchaser may notify to the Vendor or, in default of notification, to the address to which the Goods are or were to be
- 19.4. Delivered, or if the Purchaser is a company at the Vendors option to the Purchaser's registered office.

20. Entire Agreement

- 20.1. This Agreement constitutes the entire Agreement 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.

21. Governing Law

- 21.1. This contract is governed by the laws of England and the Purchaser agrees to submit to the prejudice of the English law courts.