



POWER UTILITIES GROUP

TERMS AND CONDITIONS OF SALE

1. Definitions

1.1 In these conditions the following definitions shall apply:

Company means Power Utilities Limited or any subsidiary company (as defined in section 736 of the Companies Act 1985) of Power Utilities Limited;

Contract means any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these conditions;

Customer means the person, firm or company who purchases the Goods from the Company;

Goods means any goods agreed in the Contract to be supplied to the Customer by the Company (including any instalment or part of them).

2. Application of Conditions

2.1 These conditions constitute the only conditions upon which the Company is willing to supply the Goods and/or services specified (if any) and shall prevail to the exclusion of all other terms and conditions (including any terms and conditions which a Customer may purport to impose).

2.2 No terms or conditions delivered with or contained in the Customers purchase order, confirmation of order or other document shall form part of the Contract and no modification of these conditions shall be binding upon the Company unless agreed in writing by a director of the Company.

2.3 Any quotation given by the Company for Goods is an invitation to treat only and is valid for a period of 30 days from its date (unless previously withdrawn by the Company).

2.4 Each order or acceptance of a quotation for Goods by the Customer shall be deemed to be an offer by the Customer and is subject to acceptance in writing by the Company.

2.5 No Contract shall come into existence until the Company despatches an acknowledgement of order to the Customer.

3. Description

3.1 The quantity and description of the Goods shall be as set out in the Company's acknowledgement of order.

3.2 Any specifications, drawings, particulars of weights or dimensions or other descriptions or information issued by the Company or contained in the Company's catalogue price list or other advertising matter are intended merely to present a general indication of the Goods described therein. They shall not form part of the Contract and this is not a sale by sample.

3.3 The Company gives no warranty, representation or condition (whether express or implied) as to the accuracy of any figures or particulars of performance given by the Company.

3.4 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or which do not materially affect their quality or performance and the Customer shall provide any person who uses the Goods with any information or instructions provided by the Company which may affect the safe use of the Goods.

4. Price and Payment

- 4.1 Prices for the Goods quoted by the Company are nett ex-works unless otherwise stated and are exclusive of value added tax at the prevailing rate.
- 4.2 Pallets, bags, pans and special cases will be invoiced at cost if not returned on request in good condition carriage paid, to the Company's premises within 14 days of delivery of the Goods. Non-returnable packing cases will be charged at cost.
- 4.3 Notwithstanding the Contract price of the Goods, as stated in any quotation or acknowledgement of order, the Company shall be entitled to increase the price of the Goods in the event of any increase in the cost of labour, materials or transport of the Goods prior to the date of delivery. If any expense is caused to the Company through any act or omission of the Customer, the Company shall be entitled to increase the Contract price of the Goods to cover the cost or loss occasioned to the Company as a result.
- 4.4 Subject to clause 4.6, payment for the Goods is due within 30 days of the date of the invoice unless otherwise agreed in writing.
- 4.5 Time for payment shall be of the essence and no payment shall be deemed to be received until the Company has received cleared funds.
- 4.6 If payment is in arrears the Company has the right to:
 - 4.6.1 Charge interest on such sum which shall accrue on a daily basis as from the due date for payment at the rate of 4% per annum above Barclays Bank Plc base rate from time to time both before and after judgment until payment is made;
 - 4.6.2 Withhold any further deliveries of Goods (whether under the same or any other Contract) until all arrears of payment have been settled and/or require payment in full in advance for any further Goods before delivering such Goods.
- 4.7 On the termination of the Contract all liabilities under the Contract shall become due and payable immediately.

5. Title and Risk

- 5.1 The Goods are at the risk of the Customer from the time when the Company notifies the Customer that the Goods are available for collection (unless agreed otherwise in writing).
- 5.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full all sums due in respect of the Goods and all other sums which are or which become due to the Company by the Customer.
- 5.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
 - 5.3.1 Hold the Goods as fiduciary agent and bailee for the Company;
 - 5.3.2 Store the Goods separately from all other Goods and in such a fashion as to be readily identifiable as the Company's property;
 - 5.3.3 Not destroy, deface or obscure any identifying mark; and
 - 5.3.4 Maintain the Goods in satisfactory condition and keep them insured.
- 5.4 The Customer may resell the Goods before ownership has passed to it provided that any such sale shall be in the ordinary course of the Customer's business at full market value and shall be made by the Customer acting as principal. Until that time, the Company may revoke the Customer's right to possession, sale or use of the Goods and shall be entitled to enter any premises of the Customer to recover them.

6. Delivery

- 6.1 All Goods will be delivered ex-works unless otherwise stated by the Company, in which event:
 - 6.1.1 The Goods shall be delivered by such method of transport as the Company considers appropriate;
 - 6.1.2 The Goods shall be at the risk of the Customer from the time of delivery to the Customer or the carrier (whichever is earlier);

- 6.1.3 The Company shall not consider any claims for damage, shortage, mis-delivery, non-delivery or loss in transit which are not received by the Company in writing within [10] days of arrival or anticipated arrival of the Goods at the delivery destination (in the case of U.K. sales) or [30] days of arrival or anticipated arrival of the Goods at the port of destination (in the case of sales outside the U.K.).
- 6.2 The due date for delivery of Goods shall be such date following the Contract date as shall be practicable and convenient to the Company. Any date or time stated by the Company for delivery of the Goods is intended to be an estimate and time for delivery shall not be of the essence.
- 6.3 Unless otherwise agreed, the Company shall be entitled to deliver the Goods in advance of the stated delivery date and/or by instalments, at the Company's discretion.
- 6.4 The Company shall not be liable for any direct, indirect or consequential loss caused by any delay in delivery of the Goods nor shall any delay entitle the Customer to rescind or terminate the Contract unless such delay exceeds [180] days. Any liability of the Company for non-delivery of any Goods shall be limited to issuing a credit note for the Contract price of such Goods.
- 6.5 If the Customer fails to accept delivery of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods as a result of a lack of or inadequate delivery instructions, the Company shall be entitled to:
 - 6.5.1 Store the Goods and charge the Customer for such storage and administration costs incurred; and
 - 6.5.2 Sell the Goods and account to the Customer for the excess over the Contract price or charge the Customer for any deficit below the Contract price.
- 6.6 The delivery of Goods of a quantity up to 10% more or less than the quantity accepted by the Company shall be due performance of the Contract and the Customer shall accept and pay for such Goods pro rata to the Contract price.
- 6.7 The Customer shall be responsible for obtaining any import licences and complying with all regulations governing the admission of the Goods into the country of destination and for payment of all customers' duties, port dues and other charges.

7. Intellectual Property

- 7.1 The Customer shall indemnify the Company against all claims, demands, damages, penalties, costs and expenses for which the Company might become liable by reason of the infringement or alleged infringement of any patents, registered designs, trademark, copyright (including design copyright) or any other industrial or intellectual property right arising out of its performance of the Contract in accordance with the Customers specifications.

8. Quality

- 8.1 All Goods are supplied on the express condition that the Customer is responsible for satisfying itself that the Goods meet its requirements. All conditions and warranties (whether express, implied or statutory) that the Goods (or their size, shape, capacity, performance or strength, quality or other features) are fit or suitable for the purpose for which the Customer requires them, are expressly excluded to the fullest extent permitted by law and the Company gives no representations to this effect.
- 8.2 In the case of Goods where the Company is not the manufacturer, the Company shall endeavour to pass on to the Customer the benefit of the manufacturer's warranty (if any).
- 8.3 The Company's liability in respect of any defect, inadequacy or failure in or of the Goods, is limited to making good (by replacement or repair of the Goods at the Company's option) any significant defects which:

- 8.3.1 Under reasonable and proper use appear within a period of six calendar months from the date of delivery of the Goods. Goods delivered by instalments or under successive Contracts are deemed to be used by the Customer in the order in which the same are delivered; and
 - 8.3.2 Are notified to the Company within 7 days of discovery by the Customer; and
 - 8.3.3 Are solely or principally due to defective material or workmanship.
- 8.4 The Company shall not be under any liability in respect of any Goods:
 - 8.4.1 Which the Customer makes further use of after giving notice of a defect pursuant to clause 8.3; or
 - 8.4.2 Have been subjected to any, or any further, fabrication process or treatment before any claim is received by the Company (unless the Customer could not reasonably have detected the defect); or
 - 8.4.3 The defect arises because the Customer has failed to follow the Company's instructions as to storage, installation, use or maintenance or (if there are none) good trade practice; or
 - 8.4.4 The Customer alters or repairs such Goods.
- 8.5 The Company may, at the Company's option, repay the Contract price paid, or raise a credit note if the Contract price has not been paid, in respect of any Goods which it is liable to replace or repair pursuant to clause 9.1. Such Goods shall on request be returned, carriage paid to the Company's premises.

9. **Limitation of Liability**

- 9.1 Subject to clause 9.2:
 - 9.1.1 The Company shall not be liable to the Customer for loss of profit, loss of business or depletion of goodwill, in each case whether direct, indirect or consequential or for any claims for consequential compensation whatsoever (howsoever caused), which arise out of or in connection with the Contract.
 - 9.1.2 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the lesser of £30,000 or 200% of the Contract Price.
- 9.2 Nothing in these conditions shall exclude or limit the liability of the Company for:
 - 9.2.1 Death or personal injury caused by the Company's negligence;
 - 9.2.2 Any matter which it would be illegal for the Company to exclude or attempt to exclude liability for; or
 - 9.2.3 Fraud or fraudulent misrepresentation.

10. **Insolvency**

- 10.1 This clause applies if:-
 - 10.1.1 The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 10.1.2 An encumbrancer takes possession, or a receiver is appointed, over any property or assets of the Customer; or
 - 10.1.3 The Customer ceases, or threatens to cease, to carry on business; or
 - 10.1.4 The Company reasonably apprehends that any of the events mentioned above are about to occur in relation to the Customer and notifies the Customer accordingly.

10.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract without any liability to the Company, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. **General**

- 11.1 No orders may be cancelled or varied in whole or part by the Customer except with the written agreement of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour & materials used) damages, charges and expenses incurred by the Company as a result of such cancellation or variation.
- 11.2 The Company may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 11.3 The Company reserves the right to extend the time for delivery or to cancel the Contract, should the Company or its suppliers or subcontractors be prevented from delivering Goods or carrying out work by reason of any industrial dispute, fire, breakdown, world-wide shortage of raw materials, official acts of government authority or other circumstances beyond its control.
- 11.4 If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the other provisions of the Agreement remain in full force and effect.
- 11.5 Failure or delay by the Company in enforcing any provision of this Contract shall not be construed as a waiver of any of its rights under the contract. Any waiver by the Company of any breach or default by the Customer shall not be deemed a waiver of any subsequent breach or default.
- 11.6 All communications between the parties shall be in writing and delivered by hand or first class post to the relevant party's address as set out in the acknowledgement of order or such other address as notified to the other party.
- 11.7 The parties to the Contract do not intend that any term of this Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 11.8 This Contract shall be governed by the laws of England as a Contract made in England and the Customer hereby submits to the jurisdiction of the English Courts.