

ECLECTIC ENERGY LIMITED

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Conditions:-

"Buyer"	means the person, firm or Company who buys or agrees to buy the Goods from the Seller;
"Seller"	means Eclectic Energy Limited whose registered office is at Unit 22, Sherwood Networkcentre, Sherwood Energy Village, Ollerton, Nottinghamshire NG22 9FD;
"Goods"	means all goods manufactured and supplied by the Seller to the Buyer (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions;
"Conditions"	means these terms and conditions of sale;
"Contract"	means the contract for the sale by the Seller and purchase by the Buyer of Goods;
"Price"	means the price of the Goods plus VAT, plus Delivery Charges as defined in clause 7.3;
"writing"	includes facsimile transmission but excludes writing on the screen of a visual display unit or other similar devices.

2. BASIS OF SALE

- 2.1 These Conditions shall apply to the sale by the Seller of all Goods purchased by the Buyer and these Conditions shall govern the Contract to the exclusion of any other terms and conditions introduced or submitted by the Buyer.
- 2.2 No variation to these Conditions shall be binding on the Seller unless agreed in writing by an authorised representative of the Seller.
- 2.3 No collateral or supplemental contract may be made or construed unless confirmed in writing by an authorised representative of the Seller.
- 2.4 Any tenders or quotations submitted to the Buyer shall remain valid for the period stated in the tender or quotation, but if no period is specified such tenders and quotations shall be valid for 30 days from their date. All tenders and quotations shall be subject to these Conditions.
- 2.5 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

3. SAFETY

Any Goods supplied by the Seller must be handled correctly. The Buyer must ensure that all appropriate safety precautions are taken and that it is aware of and complies with all installation and usage instructions.

4. ORDERS AND SPECIFICATIONS

- 4.1 The Seller reserves the right to make any changes to the specification of the Goods which are required so that the Goods conform with any applicable statutory or EU requirement, PROVIDED THAT any such changes shall not materially affect the performance of the Goods.
- 4.2 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

5. DELIVERY

- 5.1 Unless otherwise agreed by the Seller in writing, delivery terms are Ex-works. The Seller shall reasonably endeavour to deliver the Goods as may be agreed between the parties on the date indicated by the Seller or the date agreed between the parties, but the time of delivery shall not be of the essence and if despite those endeavours, the Seller is unable for any reason to fulfil any delivery of the Goods on the date so indicated, the Seller shall not be deemed to be in breach of contract or have any liability to the Buyer.
- 5.2 The Buyer shall provide the Seller with clear delivery instructions in the event that the Seller agrees to deliver the Goods to any point other than the Seller's premises.
- 5.3 The Seller shall have the right to deliver any Goods ordered in instalments.
- 5.4 Failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of the Goods delivered in any one or more instalments shall not entitle the Buyer either to treat the Contract as a whole as repudiated or to reject or refuse to take delivery of any of the Goods delivered in any other instalment.
- 5.5 If the Seller fails to deliver the Goods (or any instalment thereof) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the Price of the Goods.
- 5.6 Except where the Goods are to be delivered to any point other than the Seller's premises, the Buyer shall take delivery of the Goods within 7 days of notification from the Seller that the Goods are ready for delivery.
- 5.7 The Buyer shall notify any loss of or damage to the Goods in writing to the Seller and to the carriers (if applicable) within 3 days of delivery (if less) within such time as will comply with and enable the Seller to comply with the carrier's conditions affecting such loss or damage. Where Goods are delivered by carrier, unless the Goods are checked on receipt, the carrier's documentation shall be endorsed "unexamined".
- 5.8 If the Buyer fails to take delivery of the Goods (otherwise than by reason of the Seller's fault) or fails to give the Seller adequate instructions for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may:-
- 5.8.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 5.8.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the Price under the Contract.
- 5.9 If the Goods are not supplied Ex-Works, the Buyer shall be ready to accept delivery on the due date and unless the Seller agrees otherwise shall promptly unload the Goods. For the avoidance of doubt, unless the Seller agrees otherwise, the Seller or the Seller's carrier shall not be responsible for unloading the Goods and the Buyer shall be charged for wasted time at the Seller's standard rate for wasted time and any other expenses incurred by the Seller ("Additional Charges") for:-
- 5.9.1 wasted time for any delay; and/or
- 5.9.2 each repeat delivery where the Seller or Seller's carrier leaves the delivery point and subsequently returns to the delivery point with the Goods as a result of the Buyer's inability or unwillingness to accept delivery and/or delay in unloading the Goods.

6. RISK

Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery, or if the Buyer wrongfully fails to take delivery, the time when the Seller has tendered delivery of the Goods.

7. PRICE

- 7.1 The Price of the Goods shall be the price specified by the Seller in the Seller's current price list less any discount which the Seller may agree with the Buyer in writing.
- 7.2 Unless otherwise stated prices are quoted :-
- 7.2.1 exclusive of Value Added Tax (which the Buyer shall be additionally liable to pay to the Seller); and
- 7.2.2 on an Ex-Works basis.
- 7.3 Where the Seller is required to deliver the Goods on any basis other than ex-works, unless any specific fee or charge is agreed by the Buyer with the Seller, the Seller reserves the right to charge a reasonable fee to the Buyer for the cost of any carriage and/or other expenses incurred by the Seller in relation to the delivery of the Goods ("Delivery Charges") and the Buyer shall be liable to pay delivery charges in addition to the Price of the Goods.

8. PAYMENT TERMS

- 8.1 Unless otherwise agreed, the Seller shall be entitled to invoice the Buyer for the Price of the Goods 14 days prior to the date of despatch of the Goods and the Buyer shall pay each invoice from the Seller within 14 days of the date the Seller's invoice is issued and in any event payment shall be made prior to the despatch of the Goods.

- 8.2 The Buyer shall make payment for the Price of the Goods in sterling, unless agreed otherwise in writing. Any payment received by the Seller in any other currency will not be deemed to be payment for the Goods in question.
- 8.3 In the event that the Buyer fails to pay any invoice from the Seller by the due date, all invoices issued to the Buyer by the Seller in respect of any Goods sold or supplied pursuant to any other contract shall immediately fall due for payment and any credit offered or extended by the Seller to the Buyer in respect of the same shall be cancelled immediately.
- 8.4 The Seller's invoices shall be payable in accordance with these Conditions, notwithstanding that delivery may not have taken place and the property in the Goods may not have passed to the Buyer. The time of payment of the Seller's invoices shall be of the essence of the Contract.
- 8.5 If the Buyer fails to make payment on the due date then, without prejudice to any other right or remedy available to the Seller:-
- 8.5.1 the Seller shall be entitled to charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 5% per annum above the Seller's bankers base rate current from time to time; and
- 8.5.2 the Seller shall be entitled to withhold delivery of any Goods or any instalment of them (being the subject of the Contract or any other contract) until the overdue payment is made in full.

9. TITLE

- 9.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 9.2 Until such time as title in the Goods passes to the Buyer:-
- 9.2.1 the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but shall be entitled to resell or use the Goods in the ordinary course of its business; and
- 9.2.2 the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so immediately, to enter upon any premises of the Buyer or said party where the Goods are stored and mark identify and repossess the Goods.
- 9.3 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) immediately become due and payable.

10. WARRANTIES AND LIABILITY

- 10.1 Subject to the Conditions set out below the Seller warrants that upon delivery the Goods will correspond with their specification and will be free from defects provided that the Seller shall be under no liability arising from failure by any person other than the Seller to follow the Seller's instructions (whether oral or in writing), inappropriate storage or improper use of or alterations to the Goods or any defect caused as a result of reasons which are under the control of the Buyer.
- 10.2 Save as expressly provided by these Conditions, any other warranty, condition or other term expressed or implied by statute, common law or otherwise is excluded save that nothing in these Conditions shall affect the statutory rights of a consumer which cannot be excluded by law. In particular, the Seller makes no warranty as to the fitness of the Goods for any particular purpose other than the normal purpose for which the Goods are used even if that purpose is stated in the Buyer's order unless the Seller specifically confirms in writing that the Goods are fit for such a purpose. This exclusion includes recommendations or advice from the Seller to the Buyer relating to a specific enquiry. The Buyer must satisfy itself as to the fitness for the purpose for which the Goods are intended.
- 10.3 All descriptions of the Goods, including but not limited to descriptions as to weight, size, specification, components comprised in the Goods and packaging are approximate descriptions only and the Buyer shall not rely on them as being precise and accurate.
- 10.4 The Buyer shall not be entitled to reject the Goods where the alleged defect or breach of contract is so slight that it would be unreasonable for the Buyer to reject the Goods.
- 10.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the specification shall be notified to the Seller immediately upon discovery of the defect or failure and in any event any valid claim so made shall not be accepted by the Seller unless made within 30 days from the date of delivery of the Goods.
- 10.6 Any previous Goods replaced by the Seller under this Clause 10, with new replacement Goods or part, shall belong to the Seller to whom legal title shall be considered to have been automatically transferred immediately on its replacement. If the Seller so requires, the Buyer shall return the replaced Goods to the Seller in accordance with the Seller's reasonable instructions and at the Seller's expense.
- 10.7 Where any valid claim in respect of the Goods is made by the Buyer the Seller shall be entitled to replace or repair the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the Price of the Goods (or a proportionate part of the Price), and the Seller shall have no further liability to the Buyer.
- 10.8 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the negligence of the Seller.
- 10.9 Except as expressly provided in Condition 10.7 the Seller shall not be liable to the Buyer for any loss whether direct or indirect, costs, expenses or other claims for compensation whatsoever which arise out of or in connection with the sale of the Goods to the Buyer by the Seller.
- 10.10 The Seller shall not be liable to the Buyer nor be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Seller's reasonable control such as (but without limitation) any strike, lock-out or other form of industrial action, reduction in or unavailability of power at the Seller's works or those of the Seller's suppliers, breakdown of manufacturing or other equipment and unavailability of raw materials. In the event of any such delay occurring where the Buyer buys Goods in the course of a business, the Buyer may give the Seller 30 days written notice making time of the essence and if for any reason the Seller cannot perform the Contract during that period then the Buyer may after such period determine the agreement without further obligations being owed by either party to the other.
- 10.11 The Seller shall have no liability under the provisions of these Conditions or otherwise if the Goods have not been paid for by the due date for payment and any claim by the Buyer under this Condition 10 in respect of any Goods shall not entitle the Buyer to withhold or delay payment in respect of any other Goods in respect of which no such claim has been made whether or not those Goods form part of the same consignment.
- 10.12 In the event of any claim being made against the Seller under the Contract liability will not be accepted for any defect in the goods:-
- 10.12.1 specifically drawn to the Buyer's attention before the Contract is made; and/or
- 10.12.2 where the Buyer examines the goods before the Contract is made, and that examination ought to reveal any such defect and in all other cases the Buyer shall give the Seller a reasonable opportunity to inspect the Goods in the same condition as they were at delivery after discovery of the defect and liability will not be accepted unless this procedure is followed.

11. INSOLVENCY OF BUYER

- 11.1 This Condition applies if:-
- 11.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 11.1.2 an encumbrancer takes possession or a receiver is appointed, of any of the property or assets of the Buyer; or
- 11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 11.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 11.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract and suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for, all of the Seller's outstanding invoices to the Buyer become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. GENERAL

- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at his registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions shall remain in full force and effect.
- 12.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.4 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 12.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.
- 12.6 These Conditions constitute the entire contract between the parties to the extent that the subject matter is dealt with herein and may only be varied or modified in writing under the hands of the parties or their authorised representatives.