

DE Energy Solutions Ltd.
Terms and Conditions

CONDITIONS OF SALE/PROVISION OF SERVICES

1. Interpretation

1.1 In these Conditions:

BUYER means the person who accepts a quotation of the Supplier for the sale of the Goods or whose order for the Goods is accepted by the Supplier

GOODS means the goods (including any instalment of the goods or any parts for them) which the Supplier is to supply in accordance with these Conditions

SUPPLIER means DE Energy Solutions Ltd. (registered in England under number 07045469)

CONDITIONS means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Supplier

CONTRACT means the contract for the purchase of sale of the Goods

WRITING includes telex, cable, facsimile transmission electronic mail and comparable means of communication.

SERVICES means the services to be provided by the Supplier for the Buyer and referred to in the Specification Sheet

SPECIFICATION SHEET means the sheet appended to these Conditions.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

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

2. Basis of the supply

2.1 The Supplier shall supply and the Buyer shall purchase the Goods and/or Services in accordance with any written quotation of the Supplier which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Supplier, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation of these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Supplier

2.3 The Suppliers employees or agents are not authorised to make any representations concerning the Goods and/or the Services unless confirmed by the Supplier in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Supplier or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods and/or the provision of Services which is not confirmed in Writing by the Supplier is followed or acted upon entirely at the Buyers own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

2.6 In entering into this Contract the Buyer assumes responsibility for the Goods being sufficient for its purpose. As the Buyer has greater knowledge of his own requirements the Seller shall not accept any responsibility for the performance or suitability of the Goods in their final operating environment whether or not details of the final operating environment have been made available to the Seller.

3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by the Suppliers authorised representative.

3.2 The Buyer shall be responsible to the Supplier for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Supplier any necessary information relating to the Goods and/or all necessary data or other information relating to the Services within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Suppliers quotation (if accepted by the Buyer) or the Buyers order (if accepted by the Supplier) and, where applicable, the Services shall be provided in accordance with the Specification Sheet and otherwise in accordance with the Suppliers current brochure or other published literature relating to the Services from time to time, subject to these Conditions.

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Suppliers use of the Buyers specification.

3.5 The Supplier reserves the right to make any changes to the subject mater of the Contract which are required to conform with any applicable statutory or EU requirements or which do not materially affect the quality or performance.

3.6 No order which has been accepted by the Supplier may be cancelled by the Buyer except with the agreement in Writing of the Supplier and on terms that the Buyer shall indemnify the Supplier 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 Supplier as a result of cancellation.

4. Price of the goods

4.1 The price of the Goods and/or Services shall be the Suppliers quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Suppliers published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Supplier without giving notice to the Buyer.

4.2 The Supplier reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or the Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) in any change in delivery dates, quantities or specifications for the goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Supplier adequate information or instructions.

4.3 If this Contract relates to the supply of Goods, then except as otherwise stated under the terms of any quotation or in any price list of the Supplier, and unless otherwise agreed in Writing between the Buyer and the Supplier, all prices are given by the Supplier on an ex works basis, and where the Supplier agrees to deliver the Goods otherwise than at the Suppliers premises, the Buyer shall be liable to pay the Suppliers charges for transport, packaging and insurance. In addition, the cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Supplier before the due payment date

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Supplier.

5. Terms of payment

5.1 The Buyer shall pay the price of the Goods within 30 days of the date of the Suppliers invoice, and the Supplier shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.1 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:

5.1.1 cancel the contract or suspend any further deliveries or provision of Services to the Buyer;

5.1.2 appropriate any payment made by the Buyer to such of the Goods or the Services as the Supplier may think fit (notwithstanding any purported appropriation by the Buyer); and

5.1.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above Clydesdale Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6 Delivery of Goods

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Suppliers premises at any time after the Supplier has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Supplier, by the Supplier delivering the Goods to the place.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Supplier shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Supplier in writing. The Goods may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Supplier fails to deliver the Goods (of any instalment) for any reason other than any cause beyond the Suppliers reasonable control or the Buyers fault, and the Supplier is accordingly liable to the Buyer, the Suppliers 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.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyers reasonable control or by reason of the Suppliers fault) then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7 Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Suppliers premises, at the time when the Supplier notified the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Suppliers premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Supplier 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 Supplier to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Suppliers 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 Suppliers property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Supplier shall be entitled at any time to require the Buyer to deliver up the Goods to the Supplier and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 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 Supplier, but if the Buyer does so all moneys owing by the Buyer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

8 Provision of Services

The provision of Services shall take place in accordance with the details set out in the Specification Sheet.

9 Warranties and liability in relation to the supply of Goods

9.1 Subject to the conditions set out below the Supplier warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 3 months from the date of their initial use or 6 months from delivery, whichever is the first to expire.

9.2 The above warranty is given by the Supplier subject to the following conditions:

9.2.1 the Supplier shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

9.2.2 the Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Suppliers instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Suppliers approval;

9.2.3 the Supplier shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

9.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier.

9.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

9.5 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 specification shall (whether or not delivery is refused by the Buyer) be notified to the Supplier within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Supplier accordingly, the Buyer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

9.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to the Supplier in accordance with these Conditions, the Supplier shall be entitled to replace the Goods (or the part in question) free of charge or, at the Supplier's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Supplier shall have no further liability to the Buyer.

9.7 In relation to the provision of Services, the Supplier warrants to the Buyer that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Specification and at the intervals and within the times referred to in the Specification Sheet. Where the Supplier supplies in connection with the provision of the Services any goods supplied by a third party, the Supplier does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Buyer the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Supplier. The Supplier shall have no liability to the Buyer for any loss, damage, costs, expenses or other claims for compensation arising from any material drawings designs data information (in whatever format) or instructions supplied by the Buyer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Buyer.

9.8 Except in respect of death or personal injury caused by the Suppliers negligence, the Supplier shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Supplier, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer and/or the provision of the Services, and the entire liability of the Supplier under or in connection with the Contract shall not exceed the price of the Contract, except as expressly provided in these Conditions.

9.9 The Supplier shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier' obligations, if the delay or failure was due to any cause beyond the Supplier's reasonable control. without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Suppliers reasonable control:

9.9.1 Act of God, explosion, flood, tempest, fire or accident;

9.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

9.9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

9.9.4 import or export regulations or embargoes;

9.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party);

9.9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

9.9.7 power failure or breakdown in machinery.

10 Cancellation and Suspension of the Contract

10.1 This condition applies if:

10.1.1 the Buyer is in breach of any of its obligations under the Contract or any other contract between the Buyer and the Seller; or

10.1.2 unforeseen events including (without prejudice to the generality of the foregoing) those referred to in condition 9.9 materially affect the commercial effect of the Contract; or

10.1.3 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

10.1.4 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.5 the Buyer ceases or threatens to cease to carry on business; or

10.1.6 the Seller reasonably apprehends that any of the events mentioned in conditions 10.1.3, 10.1.4 or 10.1.5 is about to occur in relation to the Buyer and notifies the Buyer accordingly; or

10.1.7 the Seller receives notice of any claim alleging that the Goods or any part thereof or any process applied to the Goods infringe any patent, copyright, design right, trademark or other industrial or intellectual property rights of any other person.

10.2 If this condition 10 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract by notice to the Buyer without any liability to the Buyer and if the Goods have been delivered but not paid for then the price of the Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11 General

11.1 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 its 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.

11.2 No waiver by the Supplier 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.

11.3 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 and the remainder of the provision in question shall not be affected.

11.4 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.

11.5 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.