

## **TERMS AND CONDITIONS OF SALE** - last edited August 2021

- 1 Definitions - In these Terms and Conditions ("the Conditions") and in any Agreement the following expressions shall have the following meanings:-
  - 1.1 'PPS' Means Portable Power Solutions Limited registered in England under company number 4738751 whose registered office is at: 10 Park Farm Industrial Estate, Evesham Rd, Greet, Cheltenham GL54 5BX U.K.
  - 1.2 'Agreement' means the Conditions and any terms specified and agreed between PPS and the Customer generally in the form of Quotation or Invoice (see 1.4)
  - 1.3 'Customer' means the Person, Firm, Company, Organisation or Public Body to whom the goods and, or services of PPS are to be supplied and whose name and address are specified in the Quotation or Invoice.
  - 1.4 'Quotation or Invoice' means the document(s) Issued by PPS incorporating the Conditions by reference and describing the goods and/or services to be supplied by PPS to the Customer including but without limitation to the quality and type of goods and/or services, the anticipated volume technical requirements and the amount and/or method of calculation of PPS's charges and all other applicable terms.
  - 1.5 'Goods and/or Services' means any goods products or equipment or other services or consultancy to be supplied by PPS to the Customer pursuant to the Agreement (including any parts or part of such goods)
- 2 General
  - 2.1 The Condition shall be deemed to be incorporated in all contracts for the supply of Goods and/ or Services to the exclusion of either the Customer's or any other conditions. The Customer shall be deemed to agree the Conditions by signing any Agreement or by using or paying for the Goods and/or Services.
  - 2.2 A quotation shall not be construed as a binding offer and a valid contract shall exist only upon PPS's acceptance of the Customer's order or upon the signing of any Service Agreement.
  - 2.3 In the event of a conflict between the Conditions and any Service Agreement, the terms of the Service Agreement shall prevail.
  - 2.4 The Agreement may not be amended, modified, varied or discharged or terminated otherwise than by the express agreement in writing of PPS and the Customer.
  - 2.5 The Agreement does not confer on anyone other than the parties to it any right pursuant to the Contract (Rights of Third Parties) Act 1999.
  - 2.6 The Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.
- 3 Price and Payment
  - 3.1 Any price quotation shall be valid
    - 3.1.1 for a period of 30 days from the date of quotation OR
    - 3.1.2 Foreign exchange varies by more than 5% from date of quotation
  - 3.2 All prices are quoted exclusive of Value Added Tax (or any other tax or Duty) which will be added at the rate prevailing at the date of invoice, if not paid directly to agents by the customer.
  - 3.3 All prices are quoted exclusive of carriage and insurance costs
  - 3.4 All prices are based upon circumstances prevailing at the date of quotation. PPS reserve, the right to release the price of any Goods and/or Services at any time prior to delivery to the Customer to account for increased labour, materials or production costs and, in the case of imported goods to allow for variations in the rate of exchange or import duties.
  - 3.5 Under GB directives, Payment of all sums due to PPS shall be made without any deduction whatsoever within 30 days from the date of invoice and if payment is not made by this date PPS shall be entitled to charge interest on any amount unpaid at the rate of £30 plus 8% plus Bank of England Base Rate per year, charged daily from the due date until cleared funds are received by PPS. If deemed necessary any collection agency fees, currently 15% are the responsibility of, and will be invoiced to, the Customer.
    - 3.5.1 If the date of the receipt of the invoice or the equivalent request for payment is uncertain, 30 calendar days after the date of shipment of the goods or services
  - 3.6 The Customer is deemed to accept any invoice issued to it by PPS unless written notice to the contrary is given by the Customer to PPS within 10 days from the date of the invoice setting out in full the nature of the dispute and describing the goods and/or services in dispute
  - 3.7 If Goods and/or Services are supplied to the Customer in installments PPS reserves the right to issue an invoice of its charges for each installment.
  - 3.8 PPS shall have a lien on all goods equipment and products supplied until payment of all sums due to PPS is made by the Customer.
  - 3.9 If any monies are due to PPS and unpaid by the Customer PPS may withhold deliveries of Goods and/or Services to the Customer and may cancel all existing contracts with the Customer without prejudice to any other rights or remedies which it may have against the customer.
  - 3.10 All Bank fees or charges incurred for the transfer of funds are the responsibility of the Customer. Invoices must be paid in full.
- 4 Delivery
  - 4.1 Unless otherwise agreed in writing by PPS, delivery of the Goods and/or Services shall take place at Customer's agreed delivery address.
  - 4.2 PPS will make every effort to deliver the Goods and/or Services within the time period specified in the Agreement but such time period is intended to be an estimate only and PPS will not be liable for late delivery. Time for delivery shall not be made of the essence by notice.
  - 4.3 If the Customer fails to accept delivery of the Goods and/or Services within a period of 1 month from the date when they are ready for delivery or delivered to the Customer, the ownership of all such Goods and/or Services will pass to PPS..All freight costs remain the responsibility of the customer, including any return costs, including but not limited to freight and any taxes.
  - 4.4 Delivery shortages or errors must be communicated to PPS within 7 days of receipt of shipment.
- 5 Risk and Title
  - 5.1 All Goods and/or Services are at the risk of the Customer from time of dispatch.
  - 5.2 Ownership of any goods supplied to the Customer shall not pass to the Customer until PPS has received in full (in cash or cleared funds) all sums due to it in respect of such goods and all other sums which are or which became due to PPS from the Customer on any account.
  - 5.3 Until ownership of any such goods passes to the Customer, the Customer shall hold such goods on a fiduciary basis as PPS's bailee. The Customer shall store such goods (at no cost to PPS) separately from all other goods in its possession and marked in such a way that they are clearly identified as PPS's property.
  - 5.4 The Customer may sell or use such goods in the ordinary course of its business at full market value for the account of PPS. Until property in such goods passes from PPS the entire proceeds of sale or otherwise of such goods shall be held in trust for PPS and shall not be paid into any overdrawn bank account and shall be at all material times identified as PPS's money.
  - 5.5 PPS may recover payment for such goods notwithstanding that ownership of any of such goods has not passed from PPS.
  - 5.6 The Customer grants PPS, its agents and employees an irrevocable license at any time to enter any premises where such goods are or may be stored in order to inspect them or to recover them or, if necessary, to dismantle any machinery or equipment into which the goods or any of them have been incorporated.

## 6 Warranty/Guarantee

- 6.1 Where PPS is not the manufacturer of the goods supplied to the Customer, PPS will endeavor to transfer to the Customer the benefit of any warranty or guarantee given to PPS.
- 6.2 PPS warrants that for a period of 12 months or the supplied goods manufacturers warranty ( whichever is longer) from the date of delivery and subject to condition 6.5 below
- 6.3 PPS will perform its obligations in respect of the Goods and/or Services with reasonable care and skill the Goods and/or Services are of satisfactory quality and fit for use as sold
- 6.4 PPS shall not be liable for a breach of any of the warranties in condition 6.2 above unless -
  - 6.4.1 the Customer gives written notice of the defect to PPS within [7] days of the time when the Customer discovers or ought to have discovered the defect and
  - 6.4.2 PPS is given a reasonable opportunity after receiving the notice of examining the Goods and/or Services and the Customer (if asked to do so by PPS) returns the Goods and/or Services to PPS's place of business at the Customer's cost for the examination to take place there.
- 6.5 PPS shall not be liable for a breach of any of the warranties in condition 6.2 above if –
  - 6.5.1 the defect arises because the Customer failed to follow Manufactures directions as to the storage, installation, commissioning, use or maintenance of the Goods and/or Services, or if
  - 6.5.2 the Customer alters, repairs, modifies, interferes with or tampers with the Goods and/or Services (or any part thereof) at any time after delivery without the written consent of PPS
  - 6.5.3 the defect arises from an unrelated fault, failure or breakdown of the Goods and/or Services which is one unconnected in any respect or manner in PPS opinion with the fault, failure or breakdown which resulted in the Customer seeking the initial repair services of PPS under the Agreement.
- 6.6 Subject to conditions above, if any of the Goods and/or Services do not conform with any of the warranties in condition 6.2, PPS shall at its sole option repair or replace such Goods and/or Services (or the defective part) or refund the price at the pro- rata unit price specified in the Agreement provided that, if PPS so requests, the Customer shall at its expense return the Goods and/or Services or the part thereof which is defective to PPS.
- 6.7 If PPS complies with conditions above it shall have no further liability for a breach of any of the warranties in condition 6.2 above in respect of such Goods and/or Services.

## 7 Returns

- 7.1 Subject to standard Distance Selling Rights for Internet sales, the Customer returns a product(s) due to incorrect ordering or the product(s) is unwanted, PPS reserve the right to charge a re-stocking fee of 25%. Goods must be returned in un-opened / unused condition and with all original packaging.

## 8 Limitation of Liability

- 8.1 Except as provided for in condition 6 above, the following provisions set out the entire financial liability of PPS (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:-
  - 8.1.1 any breach of the Agreement; and
  - 8.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.
- 8.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Agreement.
- 8.3 Nothing in these conditions excludes or limits the liability of PPS for death or Personal injury caused by PPS's negligence or fraudulent misrepresentation.
- 8.4 Subject to condition 8.1 and 8.2 above
  - 8.4.1 PPS's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise arising in connection with the performance or the contemplated performance of the Agreement shall be limited to the price of the Goods and/ or Services (which are the subject of the claim) payable under the Agreement, and
  - 8.4.2 PPS shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit loss of business, depletion of goodwill or otherwise) costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Agreement.

## 9 Assignment

- 9.1 PPS may assign or sub-contract all or part of the Agreement to any person firm or company without the prior consent of the Customer.
- 9.2 The Customer shall not be entitled to assign the Agreement or any part of it without the prior written consent of PPS,

## 10 Cancellation

- 10.1 At any time prior to shipment date of the Products, PPS will accept alterations to a purchase order in order to:
  - 10.1.1 Change the location for delivery
  - 10.1.2 Modify the quantity
  - 10.1.3 Correct a typographical or clerical error
- 10.2 Upto five (5) days prior to the shipment date of the product(s) the customer may cancel the purchase order

## 11 Customer's Indemnity Granted to PPS

- 11.1 The Customer shall indemnify and keep PPS and its directors, officers and employees indemnified fully against all liabilities costs and expenses which PPS may incur as a result in whole or part, from customer's negligence or misconduct in the use or sale of the Product(s) pursuant to this agreement, or for representations of warranties made by Customer related to the products in excess of the warranties of Supplier

## 12 Force Majeure

- 12.1 Neither party shall be liable for any default due to any act of God, governmental act, war, strike, lock-out, industrial action fire flood or civil commotion or other event beyond the reasonable control of either party. Subject to the affected party promptly notifying the other party in writing of the cause and the likely duration of the cause, the performance of the affected party's obligations to the extent affected by the cause shall be suspended during the period the cause persists provided that if performance is not resumed within 30 days after that notice, the other party may by notice in writing terminate the Agreement.

## 13 Health and Safety At Work etc Act 1974

- 13.1 The Customer shall be responsible for ensuring that the Goods and/or Services are properly used in such a manner as to be safe and to prevent any damage or risk to the health of any operator or other person following delivery to the Customer. The Customer shall be solely responsible for ensuring full compliance with the Health and Safety at Work etc Act 1974 and the regulations issued there under in relation to all use of the Goods and/ or Services upon the Customer's place of business.
- 13.2 Full compliance with the Health and Safety at Work etc Act 1974 and the regulations issued there under in relation to all use of the Goods and/or Services upon the Customer's place of business.

#### [14 WEEE PPS Registration number is WEEE/EG0483SX](#)

- 14.1 Goods are supplied via an integrator, distributor, reseller or agent to end users and not directly to end users by PPS, the agent is responsible for the registration of any WEEE put onto the EU market. Further information can be obtained from the UK Environment Agency or your local Environment office