

ENERGY CENTRE SCOTLAND LIMITED

STANDARD TERMS AND CONDITIONS - COMMERCIAL

1 Definitions

1.1 In these terms and conditions, unless otherwise stated, the following terms shall have the following meanings:

“Seller” means Energy Centre Scotland Limited;

“Purchaser” means the person, firm or company seeking to purchase any Goods from Seller;

“the Goods” means any products, articles, services or corporeal moveables offered for sale by Seller and purchased or to be purchased by Purchaser as specified in the Contract;

“Order Acknowledgment” means Seller’s written acceptance/acknowledgment of Purchaser’s order for any Goods;

“the Services” means the services including but not limited to design and installation work (including any Goods supplied in connection therewith) supplied by the Seller to the Purchaser as set out in the Contract; and

“the Contract” means the contract for sale and purchase of Goods made between Seller and Purchaser in all cases on these Terms and Conditions and Seller’s Order Acknowledgment but which may be otherwise constituted in any form.

1.2 Every order issued by Purchaser (in whatever form) and accepted in writing by Seller shall constitute a separate Contract. No Contract shall exist unless and until Seller has issued an Order Acknowledgement.

2 Seller’s Terms and Conditions to Apply

2.1 These Terms and Conditions shall apply to and govern any Contract or transaction between Seller and Purchaser and shall supersede and take precedence over any other terms and conditions, whether written or oral (including without prejudice to the foregoing generality, any contained in any order form used by Purchaser), and notwithstanding anything to the contrary in such other terms and conditions.

2.2 No amendment, variation of, or addition to any part of these Terms and Conditions may be made except in writing signed by a duly authorised representative of Seller and Purchaser.

3 Sale and Purchase of the Goods

3.1 Seller shall sell the Goods and provide Services to Purchaser and Purchaser shall purchase the Goods or receive the Services provided to them in accordance with these Terms and Conditions and the terms of the Contract.

- 3.2 Unless credit terms have been agreed in writing, the Purchaser shall pay 15% of the invoiced total at the point the Order Acknowledgment is issued and thereafter shall pay a further 75% of the invoiced total prior to delivery of the Goods and/or Services. The balance of the invoice must be paid in full and in cleared funds within 7 days of the delivery of Goods and/or the supply of Services, whichever falls first. Services will be included in any invoice. Time of payment is of the essence.
- 3.3 The price for Goods and Services shall be that specified in the Order Acknowledgment.
- 3.4 Any price quoted by Seller shall, unless otherwise indicated, be inclusive of the costs of delivery within Seller's normal delivery area. Goods agreed to be delivered outwith this area may be subject to such additional charge for delivery and carriage as Seller deems appropriate in the circumstances.
- 3.5 All prices are exclusive of Value Added Tax which will be added to the price for the Goods at the rate applicable on the invoice date. Seller reserves the right to increase or otherwise vary the price for the Goods where, after an order has been placed by Purchaser but prior to delivery, new, additional, or increased taxes, levies, tariffs, or duties are levied in respect of the Goods by H M Government or any other taxing authority.
- 3.6 Unless otherwise agreed, Seller shall be entitled to charge Purchaser for any expenses reasonably incurred by the individuals whom Seller engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Seller for the performance of the Services, and for the cost of any materials.
- 3.7 If any invoice remains unpaid beyond the agreed date for payment, interest will run on the amount outstanding at the rate of five per cent per annum above the base lending rate of the Bank of Scotland from time to time.
- 3.8 Purchaser shall have no right to set off any sums due or to become due by it to Seller against any sums due or to become due by Seller to Purchaser, and Purchaser shall make payment of any sums invoiced by Seller in respect of the Contract and/or the Goods and any interest due without any set off, compensation or deduction of any kind.

4 Delivery

- 4.1 Unless otherwise agreed, Seller shall deliver the Goods to such place or address as Purchaser may specify in its order within Seller's normal published delivery area. Purchaser shall provide manpower and facilities to promptly unload the Goods.
- 4.2 If Purchaser and Seller agree, Goods may be collected by Purchaser from Seller's premises without charge for delivery or carriage. Purchaser shall have sole

responsibility for loading of Goods and shall indemnify Seller for any claims arising therefrom.

- 4.3 Seller shall use reasonable endeavours to deliver the Goods within a reasonable period but, unless otherwise expressly agreed in writing, delivery dates specified by Seller are approximate and given for the guidance of Purchaser only. Time shall not be of the essence of the Contract with regard to delivery. Seller shall not be under any liability to Purchaser for any delay in delivery or for non-delivery of the Goods nor may Purchaser cancel the Contract or treat it as repudiated. If delivery is made by instalments separate invoices for each instalment may be issued.
- 4.4 Purchaser must notify Seller in writing within seven days of the date of delivery or collection of the Goods of any damage to or defects in all or any part of the Goods, or if the quantity delivered is not as stated in the Contract or as agreed between Seller and Purchaser. Seller shall use reasonable endeavours to procure that Goods are suitably packaged prior to despatch but without liability to Purchaser for damage for want of suitable packing. Seller shall have no liability whatsoever to Purchaser in respect of damage, defects or short delivery and Purchaser shall be deemed to have irrevocably waived all its rights and remedies which it might otherwise have had in relation to such damage, defects or short delivery unless proper notification has been made in accordance with this clause 4.4 and clause 9.3 of these Terms and Conditions.

5 Title

- 5.1 Property and title to the Goods will not pass until such time as payment is made in full to Seller of all sums and debts due in respect of the Goods supplied not only under the Contract but also under any other contract for the supply of goods and all other sums for the time being howsoever due or to become due by Purchaser to Seller.
- 5.2 Until property in and title to the Goods passes to Purchaser, Purchaser shall keep the Goods in good repair and condition and store them separately from any other property in its possession so that the Goods are readily identifiable and separable from any other goods stored on Purchaser's premises or otherwise in its possession.
- 5.3 Until such time as property and title to the Goods has passed to Purchaser, Seller shall be entitled to enter upon Purchaser's premises at any time (without giving prior notice) and repossess the Goods. Alternatively, Seller may require Purchaser at any time forthwith and at Purchaser's expense to deliver the Goods to Seller.
- 5.4 If Seller delivers the Goods to Purchaser prior to payment of the price for the Goods and/or if any other sum is due by Purchaser to Seller and Purchaser sells the Goods to a third party, Purchaser shall make such sale only as trustee for Seller and the proceeds of that sale shall be identified and kept separate from Purchaser's general bank accounts as monies to be held upon trust and payable on demand to Seller.

6 Supply of Services

- 6.1 Seller shall provide the Services to the Purchaser in accordance with the Contract in all material respects.
- 6.2 Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Seller shall notify Purchaser in any such event.
- 6.4 Seller warrants to Purchaser that the Services will be provided using reasonable skill and care.
- 6.5 The Purchaser shall prepare their premises or the site where the Services will be performed for the supply of said Services where requested to do so by the Seller in advance.
- 6.6 If the Seller's performance of any of its obligations in respect of the Services are prevented or delayed by any act or omission by the Purchaser or failure by the Purchaser to perform any relevant obligation ("Purchaser Default"):
- 6.6.1 the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Purchaser remedies the Purchaser Default, and to rely on the Purchaser Default to relieve it from the performance of any of its obligations to the extent the Purchaser Default prevents or delays the Seller's performance of any of its obligations;
 - 6.6.2 the Seller shall not be liable for any costs or losses sustained or incurred by the Purchaser arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in the Contract or these Terms and Conditions; and
 - 6.6.3 the Purchaser shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Purchaser Default.

7 Risk

The risk of loss or damage to the Goods shall pass from Seller to Purchaser on delivery (or collection of the Goods by Purchaser) and that notwithstanding that property and title to the Goods has not passed to Purchaser.

8 Lien

Seller shall have and be entitled to exercise a first and general right of lien over all or any goods or other items of Purchaser from time to time lawfully in its possession (or that of its

employees or agents) and that in respect of all monies outstanding at any time by Purchaser to Seller.

9 Warranties and Implied Terms

- 9.1 Unless otherwise stated, the Goods are not tested or sold as fit for any particular purpose or as conforming to any general or particular standards.
- 9.2 Unless otherwise stated, and except as provided in this Clause 9 or in respect of any warranty or term implied by law and which by law cannot be excluded, Seller gives no warranty, representation or undertaking, whether express or implied, regarding the condition or quality of the Goods or supply of Services and all such terms, warranties, representations and/or undertakings implied by law are to the maximum extent permitted hereby excluded, including without prejudice to the foregoing generality, those implied by Sections 13, 14 and 15 of the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994.
- 9.3 If the Goods or any of them supplied to Purchaser are defective, Seller may, at its sole option and discretion, at no further expense to Purchaser, either repair or replace the defective Goods. Purchaser shall have no other remedy in respect of defective Goods and in particular but without prejudice to the foregoing generality, shall have no remedy in damages. Purchaser shall notify any defects in the Goods to Seller in accordance with clause 4.4 and in the event that Purchaser fails to notify any defects in the Goods accordingly it shall be deemed to have irrevocably waived all its rights and remedies which it might otherwise have had with regard to such defects in respect of the Goods. Without prejudice to the foregoing Seller's total liability to the Purchaser in respect of all losses arising under or in connection with any Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £300,000.
- 9.4 Except to the extent implied by law and which by law cannot hereby be excluded, Seller shall not under any circumstances be liable to Purchaser for any indirect or consequential loss including without prejudice to the foregoing generality, financial loss, loss of profits, production, anticipated savings or income. Where any person, firm or company by whom Seller is or has been supplied validly excludes limits or restricts his or its liability to Seller in respect of the Goods and/or supply of Services or any of them or any loss or damage arising in connection therewith, then the liability of Seller shall be correspondingly excluded, limited or restricted.
- 9.5 Purchaser shall be entitled to the benefit of the manufacturer's warranty, if any, for the Goods purchased under the Contract if there are any defects in said Goods. This entitlement shall be given at the sole discretion of Seller.

10 Termination

- 10.1 Seller shall be entitled to terminate the Contract or any other contract for the supply of Goods between Purchaser and Seller in the event that Purchaser is in material breach of any terms thereof. Upon termination Seller shall be entitled to repossess the Goods or any other goods supplied under the Contract or such other contract where any sum remains outstanding in respect of the Goods or any other such goods.

Furthermore, all sums due by Purchaser to Seller at the date of termination of the Contract or any other such contract shall become immediately due and payable by Purchaser to Seller without prejudice to Seller's whole other rights and remedies.

- 10.2 In the event that Purchaser, being a limited Company, becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or has a receiver, liquidator (including a provisional liquidator) or administrator appointed to it, or being an individual, firm or partnership becomes apparently insolvent or has a trustee in sequestration appointed to his or its estate or the equivalent thereof in any foreign jurisdiction, Seller will be entitled to terminate the Contract or any other contract for the supply of goods and upon termination shall be entitled to repossess the Goods or any other goods supplied under the Contract. In such event all sums due by Purchaser to Seller at the date of termination of the Contract or any other such contract shall become immediately due and payable by Purchaser to Seller, without prejudice to Seller's whole other rights and remedies.

11 **Governing Law**

The Contract and these Terms and Conditions shall be governed by the Law of Scotland and Seller and Purchaser hereby prorogate the exclusive jurisdiction of the Scottish Courts except that Seller may at its discretion raise proceedings against the Purchaser in the courts of another competent jurisdiction.