

# General Terms and Conditions for the Supply of Goods and Services

## 1. Definitions And Interpretation

1.1 In these Conditions the following terms have the following meanings:

<b>“Conditions”</b>	the terms and conditions set out in this document;
<b>“Confidential Information”</b>	means any and all information acquired by either party about the other party’s business and/or given by one party to the other party and/or generated by either party from the other party’s information and any approval drawings provided by the Supplier shall be deemed to be Confidential Information of the Supplier;
<b>“Contract”</b>	Any agreement between the Supplier and the Customer for the sale and purchase of the Goods and/or Services incorporating these Conditions;
<b>“Customer”</b>	the person who agrees to purchase the Goods and Services from the Supplier subject to these Conditions;
<b>“Estimated Supply Date”</b>	the date on which the Supplier estimates that the Goods will be delivered to, and/or the Services will be performed and/or commence, at the Supply Address;
<b>“Goods”</b>	any goods which the Supplier is to supply to the Customer as set out in the Proposal;
<b>“Liability”</b>	means actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), demands, expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities;
<b>“Order”</b>	the Customer’s order placed in respect of a Proposal;
<b>“Normal Working Hours”</b>	as defined in clause 7.4;
<b>“Proposal”</b>	the last set of documents provided by the Supplier including the relevant proposal information such as but not limited to details of the Services, the Goods, deliverables, schedules (if any) and costs;
<b>“Public Holiday”</b>	means a Bank Holiday in England and Wales;
<b>“Services”</b>	the services which the Supplier is to supply to the Customer (including consumables in the provision of services) as detailed in the Proposal;

<b>“Supplier”</b>	<b>DALE POWER SOLUTIONS LIMITED</b> a company incorporated in England and Wales with registered number 00941798 whose registered office is at Salter Road, Eastfield Industrial Estate, Scarborough YO11 3DU;
<b>“Supply Address”</b>	the address for delivery of the Goods and/or performance of the Services which shall be the Customer’s principal place of business unless specified otherwise in the Proposal; and
<b>“VAT”</b>	value added tax chargeable under English law for the time being and any similar additional tax.

1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

## **2. Basis Of Contract**

2.1 These Conditions apply to all contracts for the supply of Goods and Services entered into by the Supplier. By placing an Order the Customer agrees to deal with the Supplier on these Conditions, subject to any terms specified in the relevant Proposal and to the exclusion of all other terms, conditions, warranties or representations (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or any other document or implied by trade custom or course of dealing).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer’s Order, confirmation of order, specification or other document shall form part of the Contract save where these Conditions (and where applicable the terms which are to be overridden) are specifically referred to in that document and the document is signed by both the Customer and the Supplier.

2.3 The Supplier’s employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed. The Customer irrevocably and unconditionally waives any right it may have to claim damages for and/or to rescind the Contract as a result of any misrepresentation whether or not contained in the Contract unless such misrepresentation was made fraudulently.

2.4 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods and/or Services which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Customer’s 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 sales literature, Proposal, 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.

## **3. Sale And Purchase**

3.1 The Supplier agrees to supply the Goods and/or Services to the Customer on the terms of these Conditions, in consideration of payment of the price of the Goods and/or Services by the Customer.

3.2 Each Order shall be deemed to be an offer by the Customer to purchase the Goods and/or Services subject to these Conditions and shall be binding on the Customer, but shall not bind the Supplier until the Supplier has accepted that Order in writing.

3.3 The Customer shall ensure that the terms of its Order and any applicable specification are complete and accurate.

3.4 Any Proposal is given on the basis that no Contract shall come into existence until the Supplier dispatches an acceptance to the Customer’s Order. Any Proposal is valid for a period of 30 (thirty) days only from its date, provided that the Supplier has not previously withdrawn it. The Supplier can

amend and/or withdraw any Proposal prior to acceptance by the Supplier of the Customer's Order in respect of that Proposal.

- 3.5 The Customer shall not be entitled to cancel in whole or in part any Order which the Supplier has accepted except where such cancellation has been accepted by the Supplier subject to reasonable cancellation charges.

#### **4. Description**

- 4.1 The quantity, description and programme of works for the supply of the Goods and/or Services shall be as set out in the Proposal.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract and this is not a sale by sample.
- 4.3 If the Goods are to be manufactured or any process is to be applied to them by the Supplier in accordance with the specifications submitted by the Customer, or if the Goods are to be marked with any trade mark at the request of the Customer, the Customer shall indemnify and hold the Supplier harmless against all Liability whatsoever which results from the Supplier's use of the Customer's specifications or the marking of the Goods or from the sale or supply of such Goods by the Supplier.

#### **5. Performance Of The Contract**

- 5.1 Where the Proposal states that a deposit is to be paid by the Customer, the Supplier shall not supply the Goods and/or Services until it has received the deposit in full in cleared funds.
- 5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or its agents, subcontractors, consultants or employees the Supplier shall not be liable for any Liability sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 5.3 The Customer shall be liable to pay to the Supplier, on demand, all Liability sustained or incurred by the Supplier arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract including but not limited to Customer delay in relation to any scheduled visits and timetables, subject to the Supplier confirming such Liability to the Customer in writing.

#### **6. Delivery Of Goods**

- 6.1 The Supplier shall use its reasonable efforts to deliver the Goods to the Customer at the Supply Address (provided there is a safe suitable route of access) on or around the Estimated Supply Date, but time of delivery shall not be of the essence.
- 6.2 The Customer shall be responsible for unloading the Goods at the Supply Address. The Customer shall provide all necessary labour and equipment to enable the Goods to be safely unloaded at the Supply Address.
- 6.3 If the Supplier agrees in the Proposal that the Customer may collect the Goods from a Supply Address which is the Supplier's address the Customer shall:
- 6.3.1 collect the Goods from the Supply Address within 30 days of the Supplier notifying the Customer that the Goods are ready;
  - 6.3.2 be responsible for loading the Goods at the Supply Address; and
  - 6.3.3 provide all necessary labour and equipment to enable the Goods to be safely loaded at the Supply Address.
- 6.4 The Goods shall be deemed delivered:
- 6.4.1 if delivered by the Supplier on commencement of the unloading of the Goods at the Supply Address; or

- 6.4.2 if collected by the Customer on commencement of the loading of the Goods at the Supply Address.
- 6.5 The Supplier shall be entitled to supply the Goods in instalments in which case each instalment shall be treated as an entirely separate agreement and any default or breach by the Supplier in respect of any such instalment shall not entitle the Customer to cancel any other instalment or treat the Contract as a whole as repudiated.
- 6.6 The Customer shall inspect the Goods on delivery and if the Goods are damaged on delivery or less than the correct amount of the Goods is delivered then, unless the Customer notifies the Supplier and the carrier (otherwise than by a note or annotation on the delivery note) within 7 (seven) days of delivery no claim against the Supplier may be made in respect of damage to or short delivery of such Goods.
- 6.7 Subject to clause 6.6 the Customer shall be deemed to accept the Goods on delivery notwithstanding any late delivery by the Supplier.
- 6.8 Subject to the other provisions of these Conditions the Supplier shall not be liable for any Liability caused directly or indirectly by any delay in the supply of the Goods and/or Services (even if caused by the Supplier's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 (ninety) days.
- 6.9 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for collection under clause 6.3.1, or the Supplier is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 6.9.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Supplier's negligence);
- 6.9.2 the Goods shall be deemed to have been delivered;
- 6.9.3 the Supplier may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and/or
- 6.9.4 if the Goods remain undelivered for 3 months, the Supplier may sell or supply the Goods (whether or not such Goods were manufactured or tailor made for the Customer or marked by the Supplier in accordance with the Customer's instructions) to a third party in any country at the best price readily obtainable by the Supplier and (after Supplier has deducted all storage and selling expenses) charge the Customer for any shortfall below the price that the Supplier would have achieved under the Contract and the price that the third party pays for the Goods,

## **7. Performance Of Services**

- 7.1 During the performance of the Services, the Supplier is entitled to replace the personnel delegated by it at its expense by other qualified personnel.
- 7.2 If necessary for timely execution of the Services, the personnel delegated by the Supplier may also work reasonable overtime in as far as local conditions and climate permit to allow completion of Services.
- 7.3 The Supplier's authorised representative shall be responsible for giving all necessary instructions for the execution of the Services.
- 7.4 Regarding the worktime schedule, the Supplier's personnel will be guided by the operational conditions at the Customer's premises and by local climatic conditions of the country. Normal working hours should be scheduled however, between 8 a.m. and 6 p.m. on days between Monday and Friday inclusive. No work will be performed on Saturdays and Sundays or on Public Holidays unless agreed with the Supplier separately in writing ("**Normal Working Hours**").
- 7.5 The Supplier may refuse without Liability to the Customer to suspend or refuse to perform the Services if it reasonably determines that the working conditions at the Supply Address are

hazardous to health and/or do not comply with the Supplier's health and safety guidelines or applicable laws or regulations.

- 7.6 To enable the Supplier to perform its obligations under the Contract, the Customer shall:
- 7.6.1 co-operate fully with the Supplier;
  - 7.6.2 provide the Supplier and its agents, subcontractors, consultants and employees with any information and/or materials that it reasonably requires;
  - 7.6.3 provide the Supplier and its agents, subcontractors, consultants and employees with access to the Supply Address and any other premises and any information and/or materials that it reasonably requires and ensure that the Supplier can perform the Services without hindrance or interruption;
  - 7.6.4 obtain all necessary licences, permissions and consents which may be required before commencement of the Services;
  - 7.6.5 make available at the Supply Address all such facilities as the Supplier may require in order to perform the Services including without limitation, access equipment, heating, lighting, power, a running water supply, welfare facilities and adequate work space;
  - 7.6.6 if required, the Customer shall provide safe, adequate and suitable means for the transportation (from and to the destinations specified in the applicable Proposal) of working personnel and of tools, equipment and materials necessary for the Services;
  - 7.6.7 ensure, in the case of indoor work, any wall openings required to bring in equipment are provided by the Customer in accordance with the work schedule detailed in the applicable Proposal;
  - 7.6.8 ensure that all working environments conform to all applicable health and safety legislation including but not limited to the Control of Asbestos Regulations (2012) as applicable and/any other applicable legislation dealing with other hazardous materials and substances;
  - 7.6.9 ensure that any necessary railings, covers and other safety devices are fitted in time before commencement of the Services and that these are continuously checked and kept in order;
  - 7.6.10 provide adequate security measures at the Supply Address, including the protection of the Supplier's materials, tools and the personal property of the Supplier's personnel against theft, damage or destruction.;
  - 7.6.11 where relevant, indicate to the Supplier the location of concealed high-voltage cables, gas, water, sewerage or similar utility supplies and shall furnish the technical information required;
  - 7.6.12 make available at the Supply Address prior to commencement of the Services all parts to be fitted and all materials required for the Services if to be procured by or on behalf of the Customer by a third party;
  - 7.6.13 store all items and materials delivered to the Supply Address for provision of the Services in a dry, closed and lockable room at the Supply Address or in its immediate vicinity;
  - 7.6.14 within 30 days of delivery or as otherwise agreed in writing with the Supplier, check in the presence of the Supplier's staff all items and materials delivered to the Supply Address for provision of the Services to make sure that they are complete and undamaged. Materials lost or damaged during storage shall be replaced or repaired at the expense of the Customer;
  - 7.6.15 unless otherwise stated in the Proposal procure, at its own expense, all necessary entry, residence and work permits and any further official permits, together with all

- necessary and legally required local insurances for the Supplier's staff promptly and in any event prior to departure by Supplier for the country in which the Services are to be performed;
- 7.6.16 inform the Supplier of all legal obligations relating to performance of the Contract at the time of the Order and of any subsequent changes, revisions and updates (in reasonable time) during the delivery of the Service. The Customer shall assist the Supplier's staff in their dealings with any relevant authorities and with the procurement of the necessary documents;
- 7.6.17 if agreed that the Customer is to grant the Supplier's personnel free board and/or free lodging, the Customer shall ensure that the food provided free of charge is wholesome, palatable and sufficient in quantity and in the case of free lodging being granted, hotel accommodation or comparable lodgings are available;
- 7.6.18 provide in the vicinity of the Supply Address throughout the provision of the Services, suitable dayrooms and workshop rooms for the Supplier's personnel. The rooms are to be provided with lighting, running water and clean toilets and be suited to the climatic conditions. They must be lockable and heated or cooled if necessary and not be accessible to unauthorised persons;
- 7.6.19 take those measures prescribed by applicable laws and/or regulations and any other best practice measures necessary for the prevention of accidents at the Supply Address. The Customer shall inform the Supplier's personnel in writing of the relevant safety precautions;
- 7.6.20 provide any protective clothing which is required for the Services and ensure that this complies with all applicable laws and regulations; and
- 7.6.21 in the vicinity of the Supply Address set up a first aid station equipped for treatment in case of accidents and make available at all times suitable means of transport for immediate transfer to a hospital.
- 7.7 In the case of accidents or illness of the Supplier's personnel while performing the Services the Customer shall provide at its own cost and expense any necessary assistance required by the Supplier's personnel, including obtaining immediate efficient medical treatment for the individual and transfer to a hospital and treatment as an in-patient if required.
- 7.8 Any cancellation by the Customer of pre-arranged agreed visits will be charged at the rates shown in the Proposal. Aborted visits to the Customer's site resulting from, false, unjustified, unauthorised calls, inaccurate instructions, inaccessibility of the site, unavailability of equipment for examination, surveillance, maintenance or repair, shall be charged in line with rates detailed in the Proposal. Any delays to the commencement of works on site that are outside of the control of the Supplier, will be charged at the previously agreed hourly rate.
- 7.9 The scope of any maintenance programme will be based on UK best practice and as detailed in the Proposal. The maintenance schedule may not incorporate all the recommendations included in the specific OEM / Manufacturer manuals. Any specific requirement the Customer may have for works directly in accordance with OEM / Manufacturer guidelines will be subject to a separate bespoke schedule and associated costs. The Supplier cannot accept liability for any loss or damage resulting directly or indirectly from any deterioration, failure or breakdown of the Customer's equipment.
- 7.10 The Customer shall be responsible for the payment of all local taxes, fees, duties and other dues arising out of or in connection with Services performed inside or outside of the United Kingdom, including any local taxation payable on the daily allowances payable to the Supplier's personnel and/or the price of the Goods and/or Services.

**8. Price And Invoicing**

- 8.1 The price of the Goods and/or Services shall be the price set out in the Proposal or, if no price is set out, calculated in accordance with the method stated in the Proposal.
- 8.2 Unless otherwise stated by the Supplier, all prices are given by the Supplier on an ex works basis, and the Customer shall be liable to pay the Supplier's charges for transport, packaging and insurance together with any additional expenses, licence fees or duties paid or incurred by the Supplier, whether as a result of the Supply Address not being in the United Kingdom or otherwise.
- 8.3 If the whole or part of the invoice is presented on a time and materials basis it shall be calculated in accordance with the following: -
- 8.3.1 the price shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Proposal;
  - 8.3.2 the Supplier's standard daily fee rates for each individual are calculated on the basis of an eight-hour day during Normal Working Hours;
  - 8.3.3 the Supplier shall be entitled to charge an overtime rate as specified in the Proposal on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in 8.3.2;
  - 8.3.4 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier 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 Supplier for the performance of the Services, and for the cost of any materials;
  - 8.3.5 work sheets shall be signed off in accordance with the procedure set out in the Proposal
- 8.4 The Supplier shall invoice the Customer in accordance with the invoice schedule referred to in the Proposal.
- 8.5 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8.6 The Supplier reserves the right, by giving notice to the Customer at any time to increase the price of the Goods and/or Services to reflect any increase in the cost to the Supplier which is due to any factor beyond its control, any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 8.7 The price is exclusive of any applicable VAT or other local sales taxes, which the Customer shall be additionally liable to pay to the Supplier.
- 8.8 The Customer shall pay each invoice submitted by the Supplier in accordance with the provisions in the Proposal or if none is specified, within 30 days of the date of the invoice and in any case, in full and in cleared funds in the currency of the invoice to a bank account nominated in writing by the Supplier.
- 8.9 Time of payment shall be of the essence.
- 8.10 No payment shall be deemed to have been received until the Supplier has received cleared funds.
- 8.11 All payments payable to the Supplier under the Contract shall become due immediately on its termination despite any other provision.
- 8.12 All payments shall be applied to invoices and to Goods and/or Services listed in such invoices in the order determined in its discretion by the Supplier.

- 8.13 If full payment is not received by the Supplier by the due date then without prejudice to its rights the Supplier shall be entitled:
- 8.13.1 to sue for the entire price; and/or
  - 8.13.2 to suspend the further provision of Goods and/or Services to the Customer without incurring any Liability; and/or
  - 8.13.3 to terminate the Contract without incurring any Liability; and/or
  - 8.13.4 to require the immediate return to the Supplier of all Goods agreed to be sold by the Supplier to the Customer in which the property has not passed to the Customer in accordance with the provisions of clause 11 below and the Customer hereby agrees to reimburse to the Supplier upon demand the Supplier's costs or expenses in recovering such Goods; and/or
  - 8.13.5 to charge interest (both before and after judgment) on the amount unpaid at whichever is the greater of the rate of 4% above the base rate from time to time of Supplier's bank compounded with monthly rests, or the rate of interest prescribed by law.

## **9. Warranty And Liability**

- 9.1 The Supplier warrants that the Goods and/or Services will comply with the warranties set out in the Proposal, subject to any exclusions referred to in the Proposal.
- 9.2 Where no Proposal exists, or where the Proposal does not detail specific warranty details the default warranty will be as detailed in 9.2.1 – 9.2.12
- 9.2.1 The Supplier's liability shall be limited at the Supplier's discretion to either repair or replace faulty parts (supplied by the Supplier) or provide payment of an amount not exceeding the original price paid.
  - 9.2.2 Warranty cover for rotating plant extends to the sooner of 12 months from date of commissioning, 18 months from the date of notification of availability for despatch, or first 500 hours of operation.
  - 9.2.3 Warranty cover for other installed and commissioned industrial plant extends to the sooner of 12 months from date of commissioning, or 18 months from the date of notification of availability for despatch.
  - 9.2.4 Warranty cover for Commercial and Industrial UPS systems extends to the sooner of 12 months from date of commissioning, or 18 months from the date of notification of availability for despatch.
  - 9.2.5 Warranty cover for spares provided by the Supplier is 6 months from date of delivery to Customer's premises.
  - 9.2.6 Unless previously agreed there is no warranty cover for component repairs.
  - 9.2.7 Warranty cover for remedial / quoted Services is 3 months for labour activities and 6 months for parts supplied as part of the works, from the date of completion of Services. The warranty cover extends only to the actual work carried out and not the plant or system as a whole.
  - 9.2.8 Faulty Goods shall be returned to the Supplier's premises at the Customer's expense.
  - 9.2.9 Costs associated with investigations, fault finding, removal and replacement of faulty parts, cost of delivery, travel and subsistence are not covered.
  - 9.2.10 The warranty cover for any replacement parts provided in connection with a warranty repair will be aligned with the original equipment warranty period offered by the Supplier.
  - 9.2.11 Removal / replacement of parts carried out by third parties not specifically authorised by the Supplier will invalidate the warranty cover.



- 9.2.12 Warranty cover does not extend to any Goods that have suffered or been subject to use otherwise than in accordance with the instructions or advice of the Supplier or undue wear and tear, accident, misuse, improper application, neglect or overloading; Goods which have not been operated and maintained in accordance with written operation and maintenance instructions provided by the Supplier; damage due to prolonged storage periods between installations, completion and commissioning; any consumable items.
- 9.3 In the event of any valid claim under the warranties referred to in 9.1 and 9.2 above being made by the Customer and where applicable in accordance with the warranty mechanism set out in the Proposal, the Supplier shall be entitled at the Supplier's sole discretion to either re-perform the defective Services free of charge, refund to the Customer the price paid for the defective Goods and/or Services (or a proportionate part of the price as appropriate), repair and/or put right the defective Goods and/or Services or replace and/or put right the defective Goods and/or Services, but the Supplier shall have no further Liability to the Customer. The refund, repair, replacement and/or re-performance of the defective Goods and/or Services shall be the Customer's sole and exclusive remedy in respect of claims under such warranties and are in lieu of any other rights or remedies the Customer may have against the Supplier with respect to the non-compliance of the Goods and/or Services.
- 9.4 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.5 The Supplier shall have no Liability to the Customer for any: -
- 9.5.1 consequential and/or indirect losses;
  - 9.5.2 loss of profits and/or damage to goodwill;
  - 9.5.3 loss of or corruption of data;
  - 9.5.4 special damages; and/or
  - 9.5.5 business interruption, loss of business, contracts, opportunity and/or production.
- 9.6 The Supplier's total aggregate Liability to the Customer in relation to the Contract shall not exceed 100% of the price of the Goods and/or Services already provided and paid for under the Contract. To the extent that any Liability of the Supplier to the Customer would be met by any insurance of the Supplier then the Liability of the Supplier shall be extended to the extent that such Liability is met by such insurance.
- 9.7 Each of the limitations and/or exclusions in these Conditions shall be deemed to be repeated and apply as a separate provision for each of:
- 9.7.1 Liability for breach of contract (including fundamental breach);
  - 9.7.2 Liability in tort (including negligence);
  - 9.7.3 Liability for breach of statutory duty; and
  - 9.7.4 Liability for breach of Common Law.
- except clause 9.6 above which shall apply once only in respect of all the said types of liability.
- 9.8 Nothing in this Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a consumer. Any provision which would be void under any consumer protection legislation or other legislation shall to that extent, have no force or effect.
- 9.9 The Customer acknowledges and agrees that the limitations of Liability contained in this clause are:
- 9.9.1 fair and reasonable;
  - 9.9.2 reflected in the prices charged and of the insurance cover carried by the Supplier; and

- 9.9.3 just and equitable having regard to the extent of the responsibility of the Supplier for any Liability suffered.
- 9.10 The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any Liability in remedying the matter itself. If the Customer does not do so, the Supplier shall have no Liability to the Customer in relation to such matter.
- 9.11 The Customer shall produce to the Supplier written evidence of any claims for which it is alleged that the Supplier has Liability together with written details of how that Liability was caused by the Supplier and the steps the Customer has taken to mitigate the Liability before the Supplier shall have any Liability for the claim by the Customer.
- 9.12 The Customer shall be under a duty to mitigate any Liability that it may suffer.
- 9.13 Nothing in these Conditions shall exclude or limit the Supplier's Liability for death or personal injury due to its negligence or any Liability which is due to its fraud or any other Liability which it is not permitted to exclude or limit as a matter of law.
- 9.14 The Supplier cannot accept liability for any loss or damage resulting directly or indirectly from any deterioration, failure or breakdown of the Customer's equipment.
- 9.15 The limitations in these Conditions are necessary in order to allow the Supplier to provide the Services at its current prices. If the Customer requires greater protection then the Supplier may agree to modify the limitations and extend its guarantees in return for the payment of a higher price for the Services.
- 9.16 Without prejudice to any other right or remedy the Supplier may have, the Customer agrees to indemnify and keep indemnified the Supplier against any and all Liability and increased administration and professional and legal costs on a full indemnity basis suffered by the Supplier (without set-off, counterclaim and/or reduction) and arising out of or in connection with any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Customer.

## **10. Change Control**

- 10.1 If either party wishes to change the scope or execution of the Goods and/or Services, it shall submit details of the requested change to the other in writing.
- 10.2 If either party requests a change to the scope or execution of the Goods and/or Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- 10.2.1 the likely time required to implement the change;
  - 10.2.2 any necessary variations to the price of the Goods and/or Services arising from the change;
  - 10.2.3 the likely effect of the change on the performance dates; and
  - 10.2.4 any other impact of the change on the Contract.
- 10.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to its prices, the Goods and/or Services, the performance dates and any other relevant terms of the Contract to take account of the change and the Contract has been varied in accordance with clause 15.12.
- 10.4 Notwithstanding 10.3, the Supplier may, from time to time and without notice, change the Goods and/or Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the prices for the Goods and/or Services. If the Supplier requests a change to the scope of the Goods and/or Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.
- 10.5 The Supplier may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with clause 8.

10.6 If the Customer requests a change which the Supplier is unable to accept, the Supplier at its sole and absolute discretion may provide the Customer with the option to terminate a Contract subject to payment for Services performed and/or payment of Supplier's committed costs and expenses in connection with the Goods and/or Services.

## **11. Risk And Title**

11.1 The Goods are at the risk of the Customer from the time of delivery.

11.2 Ownership of the Goods shall not pass to the Customer until the Supplier has received in full (in cash or cleared funds) the price of the Goods and all other sums which are or which become due to the Supplier from the Customer on any account. The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Supplier.

11.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

11.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

11.3.2 store the Goods (at no cost to the Supplier) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;

11.3.3 grant the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them;

11.3.4 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

11.3.5 maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Customer shall produce the policy of insurance to the Supplier.

11.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

11.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and

11.4.2 any such sale shall be a sale of the Supplier's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

11.5 The Customer's right to possession of the Goods shall terminate immediately if:

11.5.1 the Supplier is entitled to terminate the Contract under clause 12.1.2 below; or

11.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under this agreement or any other contract between the Supplier and the Customer, or is unable to pay as they fall due or the Customer ceases to trade; or

11.5.3 the Customer encumbers or in any way charges any of the Goods.

11.6 Where the Supplier is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Supplier to the Customer in the order in which they were invoiced to the Customer.

11.7 On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this clause 11 shall remain in full force and effect.

## **12. Termination**

12.1 Either party shall be entitled to terminate the Contract immediately by notice in writing to the other party if such other party:

- 12.1.1 commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 (thirty) days of receipt of notice of the breach requiring remedy of the same; or
  - 12.1.2 makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or elsewhere; or
  - 12.1.3 ceases or threatens to cease to carry on business; or
  - 12.1.4 at any time has a material change in the management, ownership or control of its business; or
  - 12.1.5 is suspected by the terminating party to be subject or is about to be subject to any of the events specified in clauses 12.1.2 to 12.1.4 and the terminating party notifies the other party accordingly.
- 12.2 In the event of termination by the Supplier pursuant to clause 12.1 above then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further supply under it without any Liability to the Customer and, if the Goods and/or Services have already been supplied but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Customer shall be obliged to pay interest at the rate referred to in clause 8.13.5 from the time of such cancellation or suspension until the Supplier receives payment.
- 12.3 In relation to maintenance contracts the Supplier shall use reasonable endeavours to fulfil the annual requirements to carry out all maintenance visits as detailed in the Proposal. Should the Supplier be impeded from undertaking visits as a result of circumstances beyond their control, it shall be understood that the contractual obligation has been fulfilled, without prejudice to any other conditions of maintenance work detailed in the Proposal, financial or otherwise and the balance of the full contract price will be invoiced accordingly. Cancellation shall be in writing and 3 months notice shall be given.
- 13. Force Majeure**
- 13.1 The Supplier reserves the right to defer the date of supply of the Goods and/or Services or to cancel the Contract without incurring any Liability or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 (one hundred and eighty) days, the Customer shall be entitled to give notice in writing to the Supplier to terminate the Contract.
- 14. Intellectual Property Rights**
- 14.1 Unless otherwise agreed in the Proposal, all Intellectual Property Rights in any drawings, diagrams, specifications, data, Goods and/or Services and any other materials and/or works supplied by the Supplier ("**Supplier Materials**") shall at all times be and remain the property of the Supplier or its licensor.
- 14.2 The Customer may not copy or duplicate the Supplier Materials or make available to third parties without the Supplier's express consent. The Supplier Materials may be used only in connection with the provision of the Services by the Supplier.

- 14.3 The Customer shall immediately upon the Supplier's request permanently destroy or return at the Supplier's option all Supplier Materials.
- 15. GENERAL**
- 15.1 Neither party shall directly and/or indirectly use and/or disclose the other party's Confidential Information except in the proper performance of the Contract.
- 15.2 The obligations of confidentiality and non-use set out above shall continue indefinitely except they shall not apply to information:
- 15.2.1 which the receiving party proves was already in its possession and at its free disposal prior to disclosure by the disclosing party;
  - 15.2.2 which the receiving party has developed without referring to any of the disclosing party's Confidential Information;
  - 15.2.3 which is after the date of disclosure disclosed to the receiving party without any obligations of confidentiality by a third party who is not in breach of any duty of confidentiality in doing so;
  - 15.2.4 which is or becomes generally available to the public through no default and/or omission on the receiving party's part; or
  - 15.2.5 to the extent it is required to be disclosed by law and/or the rules of any recognised stock exchange and/or regulatory authority on condition that that party gives the disclosing party as much advance notice of such disclosure as possible.
- 15.3 The exceptions in clause 15.2 above shall not apply to any combination of features merely because individual features (but not the combination itself) fall within any one or more of such exceptions.
- 15.4 At the other party's request, made at any time during the course of the Contract, and in any event upon termination or expiry of the Contract for whatever reason, each party will deliver up to the other party or at the other party's option destroy any and all materials containing the other party's Confidential Information in whatever medium which is in its possession, power or control.
- 15.5 The remedies available to the Supplier under the Contract shall be without prejudice to any other rights, either at common law or under statute, which it may have against the Customer.
- 15.6 The failure or delay of the Supplier to enforce or to exercise, at any time, or for any period of time, any term of or any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- 15.7 The invalidity or unenforceability of any term of, or any right arising pursuant to the Contract shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.
- 15.8 Any notice or written communication required or permitted to be served on or given to either party under the Contract shall be delivered by hand or sent by recorded delivery mail or any other postal method with proof of delivery (i.e. special delivery) to the other party at its address set out above or to such other address which it has been previously notified to the sending party and shall be deemed to have been given on the day of delivery.
- 15.9 The Contract is personal and specific to the Customer and the Customer may not assign, transfer, sub-contract or otherwise part with the Contract or any right or obligation under it without the prior written consent of the Supplier. The Supplier shall be entitled to assign, transfer, sub-contract or otherwise part with the whole or any part of the Contract or any right or obligation under it to any third party.

- 15.10 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of the Contract.
- 15.11 The Contract contains all the terms agreed by the parties relating to the subject matter of the Contract and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing, and no representation (unless made fraudulently), undertaking or promise shall be taken to have been given or been implied from anything said or written in negotiations between the parties prior to the Contract except as set out in the Contract.
- 15.12 No variation or amendment to the Contract shall be effective unless in writing signed by authorised representatives of the parties.
- 15.13 The Contract cannot be enforced by any person who is not a party to the Contract.
- 15.14 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales, provided that nothing in this clause shall prevent the Supplier from taking any action in any applicable foreign court where the Customer is resident outside England and Wales.
- 16. Waste Electrical And Electronic Equipment (Weee) Regulations  
– Ups E-Series Product Only**
- 16.1 Through the purchase of this product, the customer is taking on the obligation to deal with the Waste Electrical and Electronic Equipment (WEEE) in accordance with the WEEE regulations in relation to the treatment, recycling & recovery and environmentally sound disposal of the WEEE.