

TERMS AND CONDITIONS OF SALE EOGB ENERGY PRODUCTS LTD

1. Definitions.

- 1.1 "Buyer" means the person who buys or agrees to buy the goods from the Seller.
- 1.2 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 "Delivery Date" means that date specified by the Seller when the goods are to be delivered.
- 1.4 "Goods" means the articles which the Buyer agrees to buy from the Seller.
- 1.5 "Price" means the price for the goods excluding carriage, packing, insurance and VAT.
- 1.6 "Seller" means EOGB Energy Products Ltd ("EOGB").
- 1.7 "Special Order Item(s)" means any Goods that are not normally stocked by the Seller and are purchased specially for the Buyer

2. Conditions Applicable.

- 2.1 These Conditions shall apply to all contracts for the sale of goods or the supply of services by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods or the giving of any order or delivery instructions or payment for goods or any confirmation written or verbal by the Buyer shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3. The Price and Payment.

- 3.1 The Price of the Goods shall be the price stipulated in the Seller's price list current at the date of delivery of the Goods, less any rate of discount which the purchase is offered. The Price is exclusive of VAT which shall be due at the rate ruling on the date of VAT invoice. The Seller reserves the right to alter its price list at any time but notice of an alteration shall be given to the Buyer.
- 3.2 The Price shown on the Seller's confirmation of order or any other written documents shall be deemed to be an estimate and not a quotation unless specifically agreed in writing otherwise.
- 3.3 At any time before the Delivery Date the Seller may by notice in writing to the Buyer, require the Buyer to pay for the Goods before the Delivery Date and time for payment shall be of the essence. If the Seller has not exercised its right to apply this provision then the provision of Clause 3.4 shall apply.
- 3.4 Except where specified in writing otherwise, payment of the Price and VAT are strictly nett and are payable at the end of the month following that in which the Goods are delivered. Time for payment shall be of the essence.
- 3.5 This provision shall apply if, and only if, the Seller incorporates it specifically as a special condition of sale and provided that no other payments are due from the Buyer to the Seller the Buyer shall be entitled to a prompt payment discount of the Price. The amount of such discount and the terms upon which it shall apply shall, if given, be specified in writing by the Seller.
- 3.6 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until date of payment at the rate of five percent above Barclays Bank PLC's base rate from time to time in force and shall accrue at such rate after as well as before any Judgement, except where the Seller waives the right to all or part of the interest so accrued.
- 3.7 If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may:
 - 3.7.1 Suspend or cancel delivery of any articles due to the Buyer; and or
 - 3.7.2 Appropriate any payment made by the Buyer to such of the Goods (or goods supplied) under any other contract with the Buyer as the Seller may in its sole discretion think fit.

4. The Goods.

- 4.1 The Goods shall be supplied in accordance with the description contained in the Seller's specification.
- 4.2 The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements which do not materially affect the quality or fitness for purpose of the Goods.
- 4.3 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased.
- 4.4 All terms conditions and warranties (whether implied or made expressly) whether by the Seller or its servants or agents or otherwise (other than those express warranties set out in the current edition of the Seller's specification) relating to the quality and/or fitness for purpose of the Goods or any of the Goods are excluded.
- 4.5 The specifications and designs of the Goods (including the copyright, design right or other intellectual property in there) shall as between the parties be the property of the Seller. Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacturer, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

5. Delivery of the Goods.

- 5.1 Delivery of the Goods shall be made to the Buyer's address or such other address as the Buyer and the Seller shall specifically and in writing agree on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery PROVIDED THAT time shall not be of the essence in relation to delivery. The Seller shall not be responsible for any losses arising from delays in dispatch or delivery.
- 5.2 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.3 The failure of the Buyer to pay for any one or more of the said instalments of the Goods on the due dates shall entitle the Seller (at the sole option of the Seller):
 - 5.3.1 Without notice to suspend further deliveries of the Goods pending payment by the Buyer; and or
 - 5.3.2 To treat this contract as repudiated by the Buyer.
- 5.4 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within two months of the Delivery Date.
- 5.5 All chargeable repairs will be subject to a transport and handling charge based on current costs to the Seller.
- 5.6 The Buyer is liable for all transport and other charges specified in writing before this contract is made.

6. Acceptance of the Goods.

- 6.1 The Buyer shall be deemed to have accepted the Goods forty-eight hours after delivery to the Buyer.
- 6.2 After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.
- 6.3 No Goods delivered to the Buyer which are in accordance with the contract will be accepted for return without the prior written approval of the Seller on terms to be determined at the absolute discretion of the Seller.
- 6.4 If the Seller agrees to accept any such goods for return the Buyer shall be liable to pay a handling charge of twenty five percent of the invoice price. Such goods must be returned by the Buyer carriage paid to the Seller in their original shipping cartons and in a re-sellable condition.
- 6.5 Goods returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's costs without prejudice to any rights or remedies the Seller may have.
- 6.6 Any goods that have been specially or bespoke ordered or manufactured for the buyer are deemed non-returnable.

7. Cancellation of Orders.

- 7.1 No order once accepted by the Seller shall be cancelled by the Buyer without the consent of the Seller.

- 7.2 In seeking to cancel an order the Buyer unconditionally agrees to pay the greater of a sum equaling the losses suffered by the Seller in accepting cancellation (including loss of profit) or twenty-five percent of the value of the order.
- 7.3 Special order Item(s) are not returnable unless the goods are faulty or incorrect
- 8. Warranty.**
- 8.1 If the Buyer has the benefit of any express and written warranty in respect of the goods such a warranty shall cease to have effect if the goods are repaired or altered without the consent of the Seller or are applied for a purpose for which the goods were not designed or installed or if the goods are applied in a manner which is not in accordance with the instructions or recommendations given by the Seller.
- 8.2 The Buyer is liable for all costs incurred in returning defective goods to the Seller pursuant to the warranty for repair. If the Seller agrees to repair the Goods or any of them other than at the Seller's premises the Buyer shall pay for all expenses incurred by the Seller including travelling expenses in respect of attendance at any other premises.
- 8.3 Any warranty if given shall extend only to the repair or replacement of the Goods or any of them and shall not include erecting, dismantling, reinstallation, freight or any other costs incurred in returning goods to the Seller the subject of a warranty.
- 8.4 This warranty (dependent on product) is transferable to subsequent owners, provided that the transfer occurs within the original warranty period. To transfer the warranty, the new owner must claim through the original supplier/installer..
- 9. Risk.**
- 9.1 The goods are at the risk of the Buyer from the time of dispatch. Unless the Buyer notifies the Seller within seven days of the date of dispatch that the goods or any of them have not been delivered or have been damaged in transit then the Goods shall be deemed to have been properly delivered and the Buyer shall pay the price for the Goods.
- 10. Retention of Property Clause.**
- 10.1 In spite of delivery having been made property in the Goods shall not pass from the Seller until:
- 10.1.1 The Buyer shall have paid the price plus VAT in full; and
- 10.1.2 No other sums whatever shall be due from the Buyer to the Seller.
- 10.2 Until property in the Goods passes to the Buyer in accordance with the above the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the goods (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 10.3 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 10.4 The Seller shall be entitled to recover the price (plus VAT) notwithstanding the property in any of the goods has not passed from the Seller.
- 10.5 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon an premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods.
On the making of such request the rights of the Buyer until Clause 10.3 shall cease.
- 10.6 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 10.7 The Buyer shall insure and keep insured the Goods to the full Price against all risks to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 10.8 The Buyer shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part XII as amended. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 11. Insolvency or Other Defaults of Buyer.**
- 11.1 If the Buyer fails to make payment for the goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a Limited Company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have:
- 11.1.1 Suspend all future deliveries of goods to the Buyer and/or terminate the contract without liability on its part; and or
- 11.1.2 Exercise any of its rights pursuant to Clause
- 12. Set Off and Counterclaim.**
- 12.1 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set off or counterclaim which the Buyer may have or allege to have or for any reason whatever.
- 12.2 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.
- 12.3 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. The provisions of this sub clause shall apply to loss and/or expense or indirect loss and/or expense suffered by the Buyer or liability to third parties incurred by the Buyer.
- 13. Dispute.**
- 13.1 This contract is subject to the laws of England and Wales.
- 13.2 If any dispute or difference shall arise between the parties as to the meaning of this contract or any matter or anything arising out of or connected with this contract then it should be referred to the determination of an Arbitrator to be appointed by agreement of the parties or (in default of agreement within 21 days of the service upon one party of a written request to concur in such an appointment) by the President for the time being of the Chartered Institute of Arbitrators