

BHG POWER STORAGE SOLUTIONS (PTY) LTD.

STANDARD TERMS AND CONDITIONS OF SALE

1. APPLICATION

a) In these terms and conditions of sale:

- i) "Company" means BHG POWER STORAGE SOLUTIONS (Pty) Ltd.
 - ii) "Contract" means any contract between the Company and the Purchaser for the sale of goods and/or services;
 - iii) "Goods" means the goods, software, products, components or other items sold by the Company to the Purchaser;
 - iv) "Purchaser" means any person, firm or company placing an order with the Company in respect of the goods and/or services;
 - v) "Services" means the services supplied by the Company to the Purchaser.
- b) These terms and conditions shall apply to any Contract between the Company and the Purchaser.

2. QUOTATIONS

- a) Quotations may only be accepted by the Purchaser's submission of a written purchase order and prior to receipt of such are subject to change or withdrawal by the Company at any time in writing.
- b) All verbal quotations are subject to written confirmation by the company prior to acceptance of an order.

3. PURCHASE ORDERS

- a) Purchase orders shall be placed by facsimile or in writing, orders shall specify the goods with reference to type, quantity, price and delivery time. An order can be specified to be executed in one or several lots at scheduled dates.
- b) Purchase orders are subject to written confirmation by the Company.
- c) An accepted order may only be cancelled or varied with the Company's written consent and the giving of this consent shall not in any way prejudice the Company's right to recover from the Purchaser full compensation for any loss or expense arising from such cancellation or variation.

4. OWNERSHIP

Ownership of the goods shall remain with the Company until the purchase price has been paid in full.

5. RISK

All risk in the goods shall pass to the Purchaser on collection from the company's premises by such carrier the Company may engage on the Purchaser's behalf. The customer indemnifies and holds BHG harmless against any claim of whatsoever nature which may be brought against BHG by any person/s as a result of death, injury, damage to loss of property at any time arising out of, or connected with the provision of or failure to provide a service including but not limited to a negligent act.

6. DELIVERY

Delivery of the goods or the supply of the services as the case may be, shall be affected by the Company to the purchaser at an address as reflected in the quotation.

7. PRICES

- a) Unless otherwise and specifically stated prices quoted for the Company's goods and services do not include:

- i) sales tax, customs duty and any other government impost
- ii) insurance
- iii) any special packaging required by the Purchaser

iv) Installation, commissioning and maintenance. All of the above charges will be shown separately upon quoting (if applicable) in addition to the price of the goods and/or services.

b) The costs of any additional Inspection test required by the Purchaser shall be for the Purchaser's account.

c) Prices quoted are based:

i) Upon labour and material prices at the date of quotation. If at any time prior to delivery and/or installation, there shall be an increase beyond the Company's reasonable control in the cost to the Company of the manufacturing, purchasing or importing the goods, then the Company may at its option adjust the prices quoted commensurate with the increase in those costs.

ii) Prices quoted are also based on the quantities referred to in the quotation. Should there be any variation in the total quantity of the goods ordered from that quoted, the company reserves the right to amend the prices quoted.

iii) In all other respects, the Contracts shall remain in full effect.

d) Prices may be subject to exchange rate variations. These variations will be against Base Exchange rates presented in the relevant quotations and will be applied at time of invoicing.

8. PAYMENT

a) All payments are to be made strictly cash nett against invoices subject to prior arrangement, otherwise strictly cash. If any invoice covers part only of an order, the amount shall be deemed an installment of the purchase price, not a deposit. Any minor defects, that might arise, shall not interfere with payment. Extension of credit shall be at the Company's absolute discretion.

b) In the event of the Purchaser making default in payment of such invoice or otherwise under these terms and conditions or being adjudged bankrupt or compounding with creditors, the Company shall have the right to withhold further deliveries and to determine the Contract and retain any payments already made and this shall be in addition to any right of action or remedy on the Company's part for the recovery of any money's due for any antecedent breach by the Purchaser.

c) Additionally, in the case of default the Company shall be entitled to charge interest at prime rate plus five- percent p.a. (As quoted by STANDARD BANK OF SOUTH AFRICA.) on all unpaid and overdue monies. Such interest to be calculated from the due date for payment to the actual payment thereof. The Company shall be entitled to revoke Any discounts granted in respect of items for which payment is overdue in whole or part.

d) Letters of credit will be accepted by the Company and shall be:

- i) in favour of the Company
- ii) consistent with the provisions of these terms and conditions
- iii) in sufficient amount and for the period necessary to meet with all payment obligations hereunder

iv) irrevocable and confirmed by STANDARD BANK OF SOUTH AFRICA. All costs including bank charges involved with the letter of credit shall be to the account of the Purchaser.

9. WARRANTY

- a) The Company warrants its goods to be free from defects in materials and workmanship under normal use, service and conditions and provided that the said equipment has been installed in compliance with all applicable regulations and by suitably qualified personnel. The Company agrees to make any necessary repairs resulting from defective parts or workmanship.
- b) The warranty in paragraph 9 (a) above does not cover damage to goods caused by accident, misuse, acts of third parties, environmental conditions, neglect, improper installation,
- c) Improper maintenance or other causes beyond the control of the Company.
- d) All other warranties and conditions are hereby expressly excluded to the maximum extent permitted by law.
- e) The Company's obligations under the warranty in paragraph 9 (a) above in relation to goods and services shall be limited at the Company's option to:
 - in the case of goods, any of the following:
 - i) Replacement of the goods or the supply of equivalent goods
 - ii) Repair of the goods
 - iii) Payment of the cost of replacing the goods or of acquiring equivalent goods
 - iv) Payment of the cost of having the goods repaired;
 - in the case of services, any of the following:
 - supplying of the services again, or
 - payment of the cost of having the services supplied again.
- f) In the case of goods not manufactured by the Company, the Purchaser is entitled only to such benefits as the Company may receive under any contract with the manufacturer of the goods and which the Company is entitled to assign to the Purchaser.
- g) Where the Company responds to a complaint which is not covered by the warranty in paragraph 9 (a) above, it reserves the right to charge the purchaser at its normal rates for travel, subsistence, labour and materials in carrying out any inspection and a rectification.
- h) Period of Warranty: The Company warrants the goods for a period of twelve (12) months after the dispatch date of the goods.
- i) All transportation costs (including insurance) associated with the return of Products under a warranty claim shall be borne by the Company within a radius of 75km of the Sellers premises in Roodepoort. Additional costs will be borne by the Purchaser. All transportation costs (including insurance) associated with the re-delivery of Products forwarded to the Purchaser under a warranty claim shall be borne by the Purchaser.
- j) In Warranty Service: During the Warranty Period the Company will endeavour to either repair or replace at its option, any defective products within thirty (30) days after receipt at the Company's facility. The Company shall return the repaired or replaced Product to the purchaser unless otherwise agreed.
- k) Prior to returning any defective products to the Company's facility, the Purchaser shall first obtain from the Company goods received voucher (GRV). The GRV number shall be clearly displayed on the outside of the dispatch packaging.
- l) Exclusion of Warranty: The Company makes no warranty or representation, express or implied, with respect to the goods including merchantability, fitness for a particular purpose or conformity with description or sample.

- m) The warranties set out in this clause are expressly excluded should the goods which are alleged to be defective in material and/or workmanship;
- i) Be modified by the Purchaser or any person other than the Company in contravention of any modification programme provided by the company or;
- ii) Be subjected to misuse, neglect or accident or;
- iii) Be repaired or altered by service personnel unauthorised by the Company or;
- iv) Have had its serial number altered, defaced or removed or;
- v) Be damaged by accessories, peripherals or other attachment placed in or around the goods.
- n) The Company and the Purchaser expressly agree that under no circumstances shall the Company be liable, whether in contract or in tort or on any other basis, for any damages, loss, costs or expenses of any kind whatsoever, direct, indirect, incidental or consequential, sustained by the Purchaser, a customer of the Purchaser or any other person arising from or related to the use, failure, any interruption or operation or any delay in maintenance to the goods. The exclusion of liability set out in this clause, without limiting its effect in any manner whatsoever, also includes special damages or liabilities for loss of revenue, loss of business or other financial loss arising out of or in connection with the sale, lease, maintenance, use, performance, failure or interruption in operation of the goods or any system into which the Company's Product is incorporated.

10. LOGO'S AND TRADEMARKS

The Purchaser may only use Logos and Trademarks on the goods subject to approval by the Company.

11. INTELLECTUAL PROPERTY RIGHTS

- a) Any sale of goods or services shall not effect the transfer of intellectual property rights.
- b) All design details, specifications, software, technical handbooks, drawings or other data supplied to the Purchaser whether with or without charge remain the Company's property and the latter retains the right to have all such data returned upon request.

12. CUSTOMER SUPPORT, SERVICE AND DISCONTINUANCE OF PRODUCTS

- a) Support of products
 - i) The Company agrees to support the goods until such time as that Products are discontinued and for a period of five (5) years thereafter, subject to the availability of materials and components from the Company's suppliers.
 - ii) In this clause the term "support" means the provision of components, maintenance and service of the goods.
 - iii) The Purchaser acknowledges that all support or Products provided by the Company pursuant to this clause shall be provided and paid for on terms and conditions to be agreed between the parties at the time when such support is requested.

- b) Training Courses

The Company agrees to provide training courses free of charge to the Purchaser at the Company's facilities and at a mutually agreed time with respect to field engineering, operation, installation and maintenance for the goods. The Purchaser agrees to pay for travel and living expenses for its personnel.

- c) Technical Support

- i) When requested and agreed by the Company, the Company will provide on site technical engineering support for special situations where the Purchaser has been unable to correct

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problems associated with the goods. The Company shall invoice the Purchaser for such on-site support at the Company's prevailing service ratios.

- ii) The Company shall provide the Purchaser with oral and written technical engineering support for the goods during the Company's normal business hours.
- d) Goods damaged in transit
- i) The Purchaser is responsible for any damage occurring to the goods during transit and for any claims arising therefrom.
- ii) The Company agrees where possible, upon written request, to repair or replace at the Purchaser's expense the goods so damaged as soon as is practicable.
- e) Discontinuance of Products

In the event that the Company discontinues any product, the Company agrees to sell to the Purchaser such quantities of spares or replacement parts for the goods as the Purchaser may reasonably require and to service the goods for a period of five (5) years after the date of notification of discontinuance, subject to the availability of components or functional equivalents from the Company's suppliers.

13. PERMITS: DUTIES AND TAXES

Any Contract between the Company and the Purchaser is subject to the grant of all permits (including import or export permits) required in respect of the subject matter thereof, and whilst the Company will act as the Purchaser's agent for the purpose of endeavouring to obtain such permits, the Purchaser shall promptly provide whatever information, assistance, documentation and/or guarantees or deposits which may be required for that purpose, providing that the Company shall not be responsible for establishing the Purchaser's eligibility for any exemption from any taxes, levies or duties.

14. INTERPRETATION

The headings in this document shall not be taken into account in the interpretation thereof and unless the context otherwise requires, terms used herein shall bear the meanings normally ascribed to them in the electronics industry.

15. SOLE AGREEMENT

These terms and conditions and the relevant quotation constitute the exclusive record of the Contract between the Company and the Purchaser relating to the subject matters thereof, and accordingly:

- a) No warranty, representation, undertaking, guarantee or other terms or conditions of whatever nature not contained and/or recorded herein (together with the quotation) shall be binding on any party with regard to such subject matters, and
- b) No variation, modification or waiver of any provision thereof, or consent to any departure therefrom by any party, shall be of any force or effect unless the same is confirmed in writing, and signed by both parties, and in any event the same shall be effective only in the specific instance and for the purpose and the extent for which made or given.

16. DOMICILIA

For all purposes under these terms and conditions or any amendment thereof, or with regard to any matter arising there out or in connection herewith, the parties hereby choose their *domicilia citandi et executandi* at their respective addresses specified in the quotation, provided that any party shall be entitled to nominate a substitute address for that party's *domicilium citandi et executandi*, by written notice to that effect given to the other party.

17. NOTICES

Any notice required or permitted to be given by any party to another in terms of these terms and conditions shall be in writing addressed in the name of the latter (and marked for the attention of its Chairman or marked for the attention of its Managing Director where the party is a Company), and shall be delivered to the addressee at the addressee's *domicilia citandi et executandi* established for the time being in terms thereof.

18. BREACH

The agreement may be cancelled by the Company or the Purchaser ("the aggrieved party") if the other ("the defaulting party") commits an act of insolvency, or commits a breach of any provision of the agreement;

- a) which is remediable and fails to remedy such breach within a reasonable period after the aggrieved party has given written notice to the defaulting party requiring such remedy (for which purpose seven days shall be deemed to be a reasonable period for the making of any payment due under the agreement), or
- b) which is irremediable and constitutes a material breach of a material provision of the agreement.
- c) Without prejudice to the further or alternative rights of the aggrieved party arising out of such breach whether in terms of the agreement or in law providing that, notwithstanding the foregoing or anything else contained in the agreement-
 - i) The Company shall not be liable to the Purchaser under any circumstances for any indirect or consequential or special or incidental loss or damage.
 - ii) The aggregate of all liability of the Company in respect of losses and/or damages incurred by the Purchaser arising out or in connection with the agreement shall be limited to an amount equivalent to the aggregate of all amounts received by the Company from the customer in respect of the particular transaction.
 - iii) Neither party shall have any claim against the other arising out of any failure or delay in the performance of the party's obligations under the agreement caused by Act of God.
 - iv) fire, flood, war, strike, lockout, industrial dispute, shortage of materials, utilities, machinery or equipment, transport or facilities, government action, laws or regulations, riot, terrorism, or civil disturbance, defaults or delays on the part of suppliers of goods or service or on the part of independent contractors, or circumstances or factors beyond the reasonable control of that party, and to the extent that performance by such party of any obligation under the agreement is delayed by virtue of any of the foregoing, any period stipulated for such performance shall be reasonably extended.

19. CONSEQUENTIAL LIABILITY

Notwithstanding any other provisions, the Company shall not be liable for any indirect, special or consequential damages in any way arising out of a defect in the goods or out of the incorrect use or misuse of the goods.

20. APPLICABLE LAWS

These conditions or any special terms, conditions, stipulations or provisions incorporated in the contract shall be subject to any interpreted in accordance with the laws of the Republic of South Africa.