

## **Backup Power Solutions Terms and Conditions**

The Terms and Conditions contained herein shall apply to all quotations, offers, sales orders and invoices issued by, and purchase orders and letter of intent accepted by the Company.

All sales are subject to and expressly conditioned upon the Terms and Conditions contained herein, and upon the buyer's assent thereto. No variation of these Terms and Conditions will be binding upon the Company unless agreed to in writing and signed by an officer or other authorized representative of the company.

These conditions are effective and binding as and from 1 January 2021 and are in place of all previous terms and conditions issued by the Company.

### **Definitions**

1. "Company" means Backup Power Solutions Ltd., Unit 5, Portarlinton Enterprise Centre, Canal Road, Portarlinton Co. Laois R32 RW68 or any subsidiary or associated company.
2. "Buyer" means any person, firm, company, or unincorporated association, which orders or buys or licences goods from the company.
3. "Goods and Services" mean all or any goods and / or services distributed, sold, or supplied from time to time by the Company.
4. "Invoice" means the invoice given or dispatched to the buyer detailing the goods and / or services and the price.
5. "Order" means the contract between the company and the buyer (of which these conditions form part) for the supply of goods and/or services by the company to the buyer.
6. "Price" means the total price to be paid by the buyer to the company for the supply of the Goods and/or services and completion of works as specified in the contract, in accordance with these conditions.
7. "Quotations" issued by the company are valid for 30 days from date of issue.
8. "Purchase Order" means a commercial document issued by the Buyer to the Company, indicating types, quantities, and agreed prices for products or services the company will provide to the buyer.
9. "Letter of Intent" a document outlining an agreement between the company and the buyer before the agreement is finalized.
10. "Manufacturer" includes the manufacturer of any part of the goods.

### **ACCEPTANCE OF ORDERS**

1. Any quotation relating to goods and services supplied by the Company and any catalogue, mail shot, email or other advertisement of such goods and services shall constitute an invitation to treat only and not an offer to contract. Any order placed by a Buyer with the Company for goods and/or services (including orders for goods and/or services on approval) shall be accepted entirely at the discretion of the Company and, if so accepted will only be accepted upon these Conditions.
2. These Conditions shall override any contrary, difference or additional terms or conditions contained or referred to in a Buyer's order or in any other correspondence or documents from that Buyer and no addition, alteration or substitution of these conditions will bind the company or form part of any order unless expressly accepted in writing by a person authorised to sign on the Company's behalf.
3. A buyer's order shall be deemed to have been accepted by the company upon one of the below
  - Acceptance by the company of payment in cleared funds for the goods.
  - Note advising that the buyer's order has been recorded and will be fulfilled once the goods, to which the advice note relates are available.
  - Delivery of goods to the buyer or to some person firm or company authorised to collect or receive the goods on the buyer's behalf.
4. Each order which is so accepted shall constitute an individual legally binding contract between the company and the buyer.

### **SALE BY DESCRIPTION**

Unless expressly stated otherwise in the order, all goods are sold by description and not by sample, even if samples are provided.

### **DELIVERY OF GOODS**

1. Unless otherwise agreed with the buyer, the company shall affect delivery of goods to the designated kerbside location, final equipment location and positioning is the responsibility solely of the buyer.
2. Delivery of the goods shall be deemed to have taken place when the goods reach the buyer's place of business, or the place designated by the buyer for delivery of the goods. In all circumstances, including goods carried by the company's nominated carriers, delivery shall take place when the goods come within the possession or control (actual or constructive) of the buyer.
3. Risk in the goods shall pass to the buyer immediately the goods are delivered to the buyer or its representative, notwithstanding any failure by the buyer or its representative to endorse its acceptance and the company shall not have any responsibility in respect of the safety of the goods thereafter, notwithstanding that the ownership of the goods shall not have passed to the buyer. Goods damaged by the buyer its servants or agents whilst loading and unloading are the responsibility of the buyer. The buyer shall be responsible to insure the goods against all risks.
4. The company reserves the right to make deliveries by instalment in all cases. Where goods are delivered by instalment, the buyer shall not be entitled to treat defective delivery in respect of one or more instalments as a repudiation of the whole of the order nor to defer payment for any previous instalment.
5. Every effort shall be made by the company to dispatch all the goods in good condition and on time. Any time or date for delivery given by the company is given in good faith but is an estimate only. Events beyond the company's control by which availability of the goods, delivery, or the transportation of goods should be made impossible or essentially difficult, including manufacturer's failure to meet delivery schedules, shall entitle the company to cancel the contract or to postpone delivery until such hindrance may be overcome. The company shall also be entitled to cancel the contract if such hindrance or difficulty causes expense, which cannot reasonably be deemed by the company to be acceptable to it. The term "hindrance" shall be regarded as including official acts, availability of raw materials, availability of the Goods, difficulty in production and /or transport, strikes, lockouts or destruction of the goods in transit or for any reason.
6. The right to cancel the contract shall always be available to the company, if essential changes in the business situation of the Buyer are considered by the company to have taken place.
7. If the buyer fails to take delivery in accordance with notified agreement, the buyer shall pay the company all storage and handling costs arising as a result.

**INSPECTION AND ACCEPTANCE OF GOODS**

1. The buyer shall inspect the goods immediately upon delivery and within two days of delivery (time being of the essence) give notice in writing to the company of any alleged shortages in the goods or of any defect or damage to the goods or of any other matter or thing by reason whereon the buyer alleges that the goods are not in accordance with the order. If the buyer shall fail to give such notice, then the goods shall be conclusively presumed to be in accordance with the order in all respects and the buyer shall not thereafter be entitled to reject the goods or to claim from the company in respect of any shortage, damage, or other defect in the goods.
2. In the case of damage or other defect in the goods, which was not apparent on reasonable inspection, notice shall be given to the company within two days after discovery of the damage or other defect, provided this is discovered within 28 days of delivery of the goods and subject to this relaxation, Clause 4.1 shall apply.

**PROPERTY IN GOODS AND RISK**

1. Notwithstanding delivery and passing of risk in the goods, or any other provision of these conditions, property in the goods shall not pass to the buyer until the company has received in cash or cleared funds payment in full of the price and of all other sums plus VAT at the applicable rate which may be due by the buyer to the company at the time and the price and all taxes and duties are paid in full.
2. Until the property and the goods passes, the buyer shall keep the goods free from any lien, charge or encumbrances and the company may at any time require the goods to be returned to it by the buyer and if such requirement is not met within three days of demand for return to it, the company may take possession of the goods and may visit (and is hereby authorised to enter) any premises of the buyer or third party where the goods are kept for the purpose of taking possession of the goods.
3. Until such time as property in the goods passes to the buyer, the buyer shall hold same as the company's fiduciary agent and custodian and keep them separate from its property and from that of third parties and properly stored, protected, and insured and identified as the property of the company. If the buyer shall sell or otherwise dispose or process the goods (or any part thereof) it shall receive and hold as trustee for the company the proceeds of such sale, disposal or process or other monies derived from or representing the goods (or any part thereof, including insurance proceeds) and shall keep such proceeds or other monies separate from any monies or property of the buyer and /or third parties, and shall as soon as possible after receiving the same pay such monies to the company or into a separate account in trust for the company.

4. The company shall be entitled to sue for the price charges expenses and VAT once payment is due in terms of Clause 6.4, notwithstanding that the property in the goods has not passed to the buyer.

#### **PRICE AND PAYMENT**

1. The Price shall be calculated by reference to the Price quoted by the company plus Value Added Tax at the rate applicable, where applicable and /or other taxes, duties and appropriate other charges and as shall be specified in the invoice. The company reserve the right to increase the price in the event of changes in manufacturer's prices, rate of exchange, landing charges and port dues, and the cost of carriage, insurance and handling.
2. The price shall be payable in the currency stated in the contract and invoice free of all charges to the company. Every effort shall be made by the company to deliver the goods at the price quoted, however, the company reserve the right to alter the price in the event of any increase in import duty, tax variation, freight or carriage charges or insurance charges or any other charges to which the goods are subject, which increase shall be for the buyer's account and the buyer shall also bear any increase in price brought about by the revaluation or devaluation of the currency of any country from where the goods are being imported or originate.
3. The full value of each invoice will be due for payment 30 days after the invoice date (due date), unless otherwise agreed in writing. The Company reserves the right to dispatch further invoices to the Buyer in respect of increases or other charges payable pursuant to these conditions and not ascertainable at the time of dispatch of the original invoice
4. The Price and any increases and any other charges and value added tax at the rate applicable shall be paid in full by the Buyer to the Company and shall be so paid 30 days from the date shown on the Invoice (due date), unless otherwise agreed in writing between the Company and the Buyer.
5. If the price is not paid in full by the due date
  - i. the provisions of the European Communities (late payment in Commercial Transactions) regulations 2002, Statutory Instrument No. 388 of 2002 and any amendments thereto from time to time shall apply and interest will be payable pursuant to the terms of the Statutory Instrument and
  - ii. the Buyer shall reimburse to the Company (on a full indemnity basis) all costs, and expenses incurred by the Company in connection with the recovery of any amounts due to the Company.

6. Without prejudice to 6.5.2 it is hereby expressly stated that prompt payment of the price is of the essence of the order and if the buyer fails to make prompt payment the company may at its option either suspend all further deliveries of goods under the order or otherwise until payment the price, charges interest and Value Added Tax is made in full or the company may cancel the order and subsequent orders so far as goods remain to be delivered.
7. Payments made by the buyer to the company shall be applied by the company to Invoices, and to goods listed in Invoices, in such order or manner as the company shall at its entire discretion think fit.
8. Except with the express agreement in writing of the company no deduction shall be made by the buyer for any payment for goods for or on account of any matter or thing whatsoever including, but not limited to any set off, compensation, counterclaim or present or future taxes.
9. Where deemed appropriate and / or prudent, and at the sole discretion of the company, personal guarantees may be sought from the buyer or its officers, servants or agents, for an amount equal to the price of the goods and / or services or such other value as the company may determine
10. The company may from time to time, and entirely at its discretion require from the buyer a Bank Guarantee or / and an Irrevocable Letter of Credit, including to cover any retentions.

#### **WARRANTIES**

1. The Company warrants that
  - a. it has the right to sell the Goods
  - b. the Goods shall correspond with their description as set out in the documents issued by it, unless the Buyer is specifically advised by the company to the contrary, prior to delivery of the goods.
2. All guarantees, warranties and indemnities extended are strictly limited to the guarantees, warranties and indemnities given or offered by the manufacturers of the goods or any part thereof and provided that at all times the buyer adheres to the manufacturer's guidelines and recommendations as set out in the manufacturers guarantees, warranties and indemnities.

#### **LIMITATION OF LIABILITY**

1. The company's liability under Clause 7 shall be to the exclusion of all other liability to the buyer, whether contractual, tortious or otherwise for defects in the goods or for any loss or damage caused by the goods, and all other conditions, warranties, stipulations and other statements, whatsoever concerning the goods, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded; in particular (but without limitation of the foregoing) except as set out in Clause 7.1, the company grants no warranties regarding the fitness for the purpose, performance, use, nature or merchantable quality of the goods, whether expressed or implied by statute, at common law or otherwise howsoever other than those guarantees, warranties indemnities provided by the manufacturer of the goods as set out in Clause 7.2.
2. In no circumstances shall the company be liable to the buyer or any third party, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and, whatever the cause thereof: -
  - a. for any increased cost or expense to the buyer
  - b. for any loss of profit, business contracts, revenue, or anticipated savings, or
  - c. for any special indirect or consequential damage of any nature whatsoever arising directly or indirectly out of the provision by the company of the goods or any failure or defect therein or of the performance, non-performance, or delayed performance by the company of the order.
3. The company's liability to the buyer in respect of the order, in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising shall be limited to the Price.

#### **FORCE MAJEURE**

The Company shall not be responsible for any delay or failure to fulfil any of its obligations under the order nor be liable for any loss or damage suffered or incurred by the buyer or any third party by reason of any delay in delivery of the goods or any part thereof caused directly or indirectly by any act of God, war, government or parliamentary restriction, import or export regulation, strike, lockout, trade union dispute, fire, theft, flooding, breakdown of plant or premises, failure of computer system or supplies or by virtue of transportation problems or any other cause whatsoever beyond the control of the Company.

### **TERMINATION**

1. In the event of the buyer committing any breach of any term or provision of the order (including, for the avoidance of doubt, these conditions), going into liquidation, having a receiver, examiner or other similar officer appointed over the whole or any part of its assets, becoming bankrupt or apparently insolvent or granting any trust deed or entering into any composition or similar arrangement with its creditors, or if any circumstances arise which, in the sole opinion of the company render any of the foregoing likely to occur, then the company shall be entitled, without notice and without any liability whatsoever, to terminate the order forthwith and to enter the buyer's premises for the protection, removal, realization and disposal of any of the goods in which the property shall not have passed to the buyer in accordance with these conditions. The company shall also be entitled to cancel all orders or any part thereof remaining unfilled between the company and the buyer and to sell to any other party or otherwise dispose of and deal with the goods.
2. Termination of the order shall not discharge any pre-existing liability of the buyer to the company and on such termination the company shall be entitled to recover from the buyer such loss or damage as the company has suffered by reason of such termination.

### **INDEMNITY**

The buyer shall indemnify the company in respect of all loss, damage or injury occurring to any person, firm, company, or property, and against all actions, suits, claims and demands, charges or expenses in connection therewith for which the company may become liable in respect of the goods in the event that such loss, damage, or injury shall have been occasioned by the negligence or breach of duty of the buyer.

### **ASSIGNMENT AND SUBCONTRACTING**

The Company shall be entitled at all times to assign its rights under the contract (in whole or in part) or to subcontract any part of the work or services to be provided under the contract as it deems necessary or desirable.

### **PERFORMANCE BONDS**

1. The Company will not agree to issue the Buyer with a Performance Bond, Contract of Guarantee, or any variation thereof or other similar instrument, for any percentage of the Price.
2. If the event that the Company agrees to a Buyer's request for the provision of a Performance Bond, Contract of Guarantee, or any variation thereof or other similar instrument, the Buyer expressly agrees to acquire and to pay all costs and all other outlay associated with the procurement of same.



### **LIQUIDATED AND ASCERTAINED DAMAGES**

1. In no event will the Company countenance, agree to or permit Liquidated and Ascertained Damages clauses in contracts or other legally binding documentation
2. Where such clauses are included in documentation or contracts furnished by the Buyer, they are rendered void and unenforceable by the Buyer's acceptance of the Terms and Conditions contained herein

### **PRICE**

1. The following are not included in the Price:
  - a. Offloading and positioning of equipment at Buyer's site
  - b. Civil works relating to the positioning or installation of equipment
  - c. Electrical Installation
  - d. Load Bank Testing
2. Any agreement by the Company to provide services relating to offloading & positioning, electrical installation are subject to site inspection & agreement on scope of work and cost thereof; where the erection of scaffolding or equipment hire is necessary this will be separately charged. Load bank Testing where required is subject to agreement and additional charges.

### **COMMISSIONING, INSPECTION, SERVICING AND ACCESS**

Where the Company agrees to the provision of services relating to the commissioning, inspection and / or service of goods, it reserves the right to impose additional charges where access is not made available as agreed and / or where there was unreasonable delay, for whatever reason, not caused by the Company or its officers, servants or agents.

### **GENERAL**

1. No failure or delay by the Company to exercise any right, power, remedy or privilege shall operate as a waiver of the same.
2. If any term or provision of these Conditions shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of these Conditions, but the validity and

enforceability of the remainder of these Conditions shall not be affected.

3. Any notice or other communication required or permitted to be given by the Company to the Buyer or vice versa, under these Conditions shall be in writing and sent, in the cases of notices to the Company to the address given in these Conditions (or such other address as may be intimated to the Buyer from time to time) and, in the case of notices to Buyers, to that Buyer's last known address. Notice and other communications shall be sent by registered post, facsimile transmission, email or delivered by hand and shall be deemed to have been received, in the case of registered post at the time of delivery, on the facsimile transmission on the completion of the transmission by email on receipt of the email and on delivery by hand at the time of delivery. The Buyer shall keep the Company advised of all changes of address.
4. The amount of any sum due by the Buyer to the Company under the Order shall be sufficiently ascertained by certificate under the hand of a director or any other authorised signatory of the Company and such certificate shall be final and binding on the Buyer for every purpose.
5. The Company shall be entitled at its entire discretion to alter these conditions or any of them at any time or from time to time, whether by way of variation and/or substitution and/or deletion of the subsisting conditions and/or adding new conditions and these conditions as so altered shall apply to Orders whether current at the time or entered into thereafter provided always that in the case of each Order then current, one month's prior notice in writing shall be given by the Company to the Buyer stating the amended conditions of supply of Goods and the effective date thereof.

#### **GOVERNING LAW AND JURISDICTION**

These Conditions or any Order of which they form part shall be governed in all respects by the laws of the Republic of Ireland and the Company and the Buyer each hereby irrevocably agree to submit to jurisdiction of the Irish Courts.