

# General Terms and Conditions of Business

- 1) **General**

These General Terms and Conditions of Business are applicable to all deliveries made by **Cellpack Power Systems AG (the "Supplier")** unless other Terms and Conditions of Business have been agreed in writing. Quotations which carry no expiry date are not binding. These General Terms and Conditions of Business are also available in German, French and Italian. In any cases of doubt, the German version prevails.
- 2) **Conclusion of a contract** A contract of supply has been concluded when the supplier has received an order and has acknowledged it in writing.
- 3) **Technical documentation**

At the customer's request, the supplier can prepare the diagrams and layout drawings required for application for a building permit and the power grid connection request. However, the buyer remains always responsible for correct and timely approvals.

All technical documentation, diagrams and software programs remain the intellectual property of the supplier and may not be copied, reproduced, or made available to third parties without the written permission of the issuer. Unless otherwise agreed, brochures and catalogues are not binding. Data in technical documentation shall only be binding if an expressly warranted.
- 4) **Scope of supply**

The supplier's order acknowledgement is the authoritative document for the scope of supply and services. All changes by the purchaser to the quantity, quality or processing of materials and additions to the services will be invoiced.

Where delivery is to the construction site, access to the site must be clear, must allow easy access by the necessary transport wagons and materials handling equipment and must be suitable to bear their weight. If this is not ensured, all additional costs arising will be chargeable to the buyer.

If existing systems are to be extended or modified, it is the buyer's responsibility to ensure they are switched off and earthed. The supplier's personnel will simply check that the system is deenergised. Switching and earthing of the power systems can be handed over to the supplier's personnel. However, the buyer remains responsible for their correct planning and execution.

The work will be performed in accordance with the general and applicable provisions of the SIA and the Ordinance on Heavy Current. All local regulations must be made known to the supplier in advance by the buyer, otherwise all additional costs arising will be chargeable to the buyer.
- 5) **Prices**

Unless agreed otherwise, prices are in freely available CHF, net unpacked ex works in accordance with INCOTERMS 2020.

If the conditions prevailing at the time of calculating the price, in particular currency exchange rates or government / official taxes, dues, fees, customs charges etc. change between the time of the quotation and the agreed delivery date, the supplier is entitled to adjust his prices and conditions to reflect the changed conditions.

Unless agreed otherwise, packaging, transport, installation and services will be charged at the currently applicable rates.
- 6) **Conditions of Payment**

Payment shall be in accordance with the data on the invoices. For bigger orders part payments will be required. All payments must be made net without deductions of any kind within 30 days. Bank guarantees and performance guarantees for a maximum of 3 years will be supplied against part payments only if these are requested in the enquiry and confirmed in the order acknowledgement. The payment due dates must be complied with even if installation, commissioning or acceptance of the delivery is delayed for reasons outside the supplier's control.

If dispatch or installation of the goods is delayed at the request of the buyer or for any other reason outside the supplier's control, the job will be invoiced without transport and installation. Payment must be made net within 30 days.

If the buyer fails to make payment by the agreed payment due date, interest on late payments will start to accrue from the 31st day after the invoice date, without any further reminder. The interest rate applicable is 6%.
- 7) **Retention of Title**

The supplier retains title to the delivered goods until payment has been made in full.

The buyer is obliged to take appropriate measures to care for the property belonging to the supplier; in particular he grants the supplier authority on concluding of the contract to make an entry or endorsement regarding the Retention of Title in the public registers, books or the like, in accordance with the relevant statutory laws and byelaws, and to perform all the necessary formalities in this respect, at the buyer's expense. At his own expense and for the duration of the Retention of Title the buyer will keep the delivered goods in good condition and insure them for the benefit of the supplier against theft, breakage, fire, water and other risks. He will also take all measures to ensure that the supplier's claim to property is neither impaired nor nullified.
- 8) **Delivery leadtime**

The agreed delivery leadtime begins with the receipt of a technically and commercially clear order and is considered to have been complied with when before expiry of that leadtime delivery is made or readiness to dispatch is notified to the buyer.

The delivery date will be extended appropriately: if data necessary for fulfilment of the contract are not received by the supplier at the right time, or if the buyer subsequently requests changes or extensions which cause a delay to the delivery or service, or if obstacles occur which affect the supplier, the buyer or third parties and which despite the supplier's best efforts he cannot overcome. Examples of such obstacles are official measures or omissions, natural disasters, strikes, accidents, epidemics/pandemics and other significant commercial disruptions; if the buyer or a third party contracted by him to undertake work is in arrears or is late with fulfilling his contractual obligations, or if the buyer fails to comply with the Conditions of Payment.

If an agreement is made in writing regarding payment of liquidated damages for lateness, this can be enforced only if the lateness was demonstrably the supplier's fault and the buyer can demonstrate that he has suffered loss in consequence of this lateness. If a remedy is provided in the form of punctual delivery of substitute equipment, this disposes of the claim. The liquidated damages for lateness amounts to a maximum of 0.5% for each completed week of lateness, subject to a limit in total of 5% of the contractual price of that part of the delivery that is late.

In the event of lateness of the delivery or service the buyer has no entitlements or claims beyond those expressly stated in this item 8.
- 9) **Passage of Benefit and Risk**

Where delivery is ex works the benefit and risk pass to the buyer on leaving the works, where delivery includes transport and installation the benefit and risk pass to the buyer no later than completion of the system on the buyer's site.

If at the request of the buyer or for any other reason outside the supplier's control the dispatch or the installation is delayed, the risk passes to the buyer at the point in time originally agreed for delivery from the supplier's works. From that point in time onwards, the delivery will be stored and insured at the expense and risk of the buyer.
- 10) **Transport and insurance**

Unless agreed otherwise, transport is performed at the expense and risk of the buyer. Damage in connection with transport must be reported by the buyer to the final carrier immediately on receipt of the delivery or the freight documentation.
- 11) **Inspection and Acceptance**

The delivery will be inspected by the supplier in the usual way before dispatch from the works. If the buyer requests further inspections or a special acceptance inspection, these must be agreed separately and paid for by the buyer.

On completion of installation, the buyer must inspect and accept the delivery and performance within one week and immediately report any defects to the supplier in writing. If he omits to do so, the delivery and performance - subject to any latent defects - rank as approved.

Any defects reported to the supplier will be remedied as quickly as possible. It is at the supplier's discretion whether this is by repair or replacement. The buyer must afford the supplier the necessary time and opportunity to do this. Defective parts become the supplier's property after they have been replaced.

In the event of defects of any kind in the delivery or services the buyer has no entitlements or claims beyond those expressly stated in this item 11.
- 12) **Packaging**

Packaging is invoiced separately by the supplier without mutual agreement and is not returnable. If, however it is marked as the property of the supplier, it must be returned free to the place from which the delivery was sent.
- 13) **Warranty,**

Unless expressly agreed otherwise, the warranty period (guarantee period) for electromechanical and electronic equipment or parts is 24 months. It begins at departure of the delivery from the supplier's works or on completion of the installation on the customer's site. If dispatch is delayed for any other reason outside the supplier's control, the warranty period ends not later than 30 months after notification of readiness to dispatch. For third party deliveries and purchased equipment included in the supplier's scope of delivery we provide warranty cover which matches that provided by the respective supplier. The SIA standard 118 is applicable to building work.

The warranty lapses prematurely if the buyer or a third party performs modifications or repairs without the supplier's prior written approval, or if, once a defect has occurred, the buyer does not immediately take all necessary measures to limit the damage and allow the supplier the opportunity to rectify the defect.

The supplier gives the assurance that at the written request of the buyer he will as quickly as possible repair or replace at his discretion all parts of the delivered goods that prior to expiry of the warranty period have become defective or unusable due to demonstrably poor material, defective design or faulty workmanship. The parts subject to the complaint must be returned to the supplier on request. Where defective parts have been replaced, the defective parts that were replaced become the supplier's property.

After expiry of the warranty period, if parts of the delivered goods have been replaced or repaired the warranty is extended to cover only those parts which had been replaced or repaired.

Only those characteristics expressly designated as such in the specifications rank as guaranteed characteristics. The guarantee does not extend beyond the expiry of the warranty period. If the guaranteed characteristics are not satisfied or only partially satisfied, the buyer can claim immediate remedial measures from the supplier. The buyer must afford the supplier the necessary time and opportunity to do this. If the remedial measures are unsuccessful or only partially successful, the buyer can claim an appropriate reduction in the price.

Damage that cannot be demonstrated to be caused by poor material, defective design or faulty workmanship, such as damage due to natural wear and tear, defective maintenance, disregard of the operating instructions, overloading, unsuitable consumable materials, chemical or electrolytic influences, building or installation work not performed by the supplier, and due to any other reasons outside the suppliers control are excluded from the provisions of warranty and liability.

The prerequisite for a warranty claim in respect of defective software programs is that the fault is reproducible in the unmodified original version of the respective software program and is documented in the greatest possible detail. If data and/or data carrier material is lost or damaged, the warranty does not cover the work involved in recreating lost data.
- 14) **Liability**

In the event of defects in materials, design or execution, and also in the event of failure to achieve guaranteed characteristics the buyer has no entitlements or claims beyond those expressly stated in this item 13.

Claims by the buyer based on any legal grounds other than those expressly provided in these Terms and Conditions of Delivery, in particular all claims on grounds other than those expressly provided for damages, reduction, nullification of the contract or withdrawal from the contract are excluded.

The buyer has no claim under any circumstances for restitution of damages such as loss of production, loss of use, loss of business, loss of profits, costs due incorrect tariff metering, third party claims or any directly or indirectly consequential damages not arising from the delivered goods itself. This limitation of liability does not apply to cases of deliberate unlawful actions or mandatory obligations under the law.
- 15) **Cancellation**

Cancellation or suspension of current orders requires the supplier's written agreement. Costs up that point will be invoiced immediately.
- 16) **Place of jurisdiction and applicable law**

The place of jurisdiction and place of performance for both parties is the supplier's registered office. The supplier is however entitled to take action against the buyer at his registered office. Swiss law is applicable, excluding the United Nations Convention on Contracts for the International Sale of Goods.

**Cellpack Power Systems AG**



Power Systems

effective from: 01.05.2020