

Uninterruptible Power (KUP Ireland) Ltd – Conditions of Sale

1. INTERPRETATION

1.1 In these Conditions of Sale the following expressions shall have the following meanings:

- "Buyer"** any person, firm or company who purchases Goods and/or Services from the Company.
- "Company"** Uninterruptible Power (KUP Ireland) Ltd (Company number 308576) Unit E, Baldonnell Business Park, Baldonnell, Dublin 22, D22 X5R2, Ireland.
- "Conditions"** these Uninterruptible Power (KUP Ireland) Ltd Conditions of Sale.
- "Contract"** any contract between the Company and the Buyer for the sale and purchase of Goods and/or for the provision of Services.
- "Delivery Point"** the address at which delivery of the Goods and/or performance of the Services is to take place as specified in the Company's acknowledgement of order.
- "Goods"** any goods agreed in the Contract to be supplied to the Buyer by the Company.
- "Services"** any installation or other services agreed in the Contract to be provided to the Buyer by the Company.

2. APPLICATION OF CONDITIONS

2.1 These Conditions shall be incorporated into all Contracts between the Company and the Buyer to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 These Conditions apply to all the Company's sales and no variation or waiver of these Conditions or any representations about the Goods or Services shall have effect unless confirmed by the Company in its acknowledgement of order or otherwise expressly agreed in writing by the Company. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.3 Each order or acceptance of a quotation for Goods and/or Services by the Buyer from the Company constitutes an offer by the Buyer to buy such Goods and/or Services subject to these Conditions and no order placed by the Buyer (whether pursuant to a quotation or otherwise) shall be deemed to be accepted by the Company until a written confirmation of its acceptance of the Buyer's order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer or commences performance of the Services.

2.4 Any quotation or acceptance of a quotation for Goods and/or Services by the Buyer is valid for a period of thirty days from its date, unless otherwise agreed in writing by the Company, provided that the Company has not previously amended it or withdrawn it.

3. DESCRIPTION/TECHNICAL CHANGES

3.1 The Buyer shall ensure that the terms of its order and any applicable specification or design supplied by the Buyer are complete and accurate.

3.2 Subject to Condition 3.1 and 3.3 the description of the Goods and/or Services and any specifications for them shall be as set out in the Company's quotation proposal or product description.

3.3 The Company shall have the right to make technical, design or specification changes to the Goods and/or Services at any time, providing that the changes made shall not adversely affect the performance of the Goods and/or Services.

4. DELIVERY

4.1 Delivery of the Goods and performance of the Services shall take place at the Delivery Point.

4.2 Any dates quoted or acknowledged by the Company for delivery of the Goods and/or performance of the Services are intended to be an estimate only and are also subject to availability and time for delivery and/or performance shall not be made of the essence by notice. If no dates are so specified, delivery and/or performance shall be within a reasonable time.

4.3 The Buyer shall be responsible for supplying any information required in support of applications for necessary authorisation from export control authorities to enable delivery of the Goods and/or Services to the Buyer. It is the Buyer's responsibility to ensure that any such authorisations being available at the time of delivery.

4.4 The Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or performance of the Services (even if caused by the Company's negligence) not to the extent that the Buyer refuses to accept the Goods or Services or to refuse to pay in full for Goods or Services when they are delivered or performed or entitle the Buyer to terminate or rescind the Contract unless such delay exceeds three months.

4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisation, the risk and the responsibility for the Goods and/or Services shall be deemed to have been delivered and the Company may invoice for the Goods and may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Goods shall be deemed to have been delivered to the Buyer complete and undamaged and to have been accepted by the Buyer unless the Buyer notifies the Company in writing within two working days after the delivery at the Delivery Point.

4.7 Where the Buyer (having consulted the Company and obtained the Company's consent) requests a postponement or delay to delivery beyond 90 days from the date of the written acknowledgement of order the Company may at its sole discretion increase its price for the Goods in question in line with the general increases in its price list made from time to time.

5. RISK/TITLE

5.1 Risk of loss and damage to the Goods shall pass (and the Buyer's responsibility for insurance of the Goods shall arise) to the Buyer at the time of delivery.

5.2 Notwithstanding delivery and the passing of risk in the Goods, ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of (a) the Goods and/or Services; and (b) all other sums which are, or which become due to the Company from the Buyer on any account.

5.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- hold the Goods on a fiduciary basis as the Company's bailee; and
- store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property; and
- not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

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

- any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and
- until title passes the proceeds of such sale shall be held in trust for the Company and shall be held in a separate bank account in such a way as to be readily identifiable as the Company's money.

5.5 The Buyer's right to possession of the Goods shall terminate immediately if:

- the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, examiner and/or manager appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an examiner of the Buyer or notice of intention to appoint an examiner is given by the Buyer or its directors or by creditors (as defined in section 517 of the Companies Act 2014), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to make any payment on the due date or otherwise fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 570 of the Companies Act 2014 or the Buyer ceases to trade; or

(c) the Buyer encumbers or in any way charges any of the Goods.

5.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

5.7 The Buyer grants the Company, 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 Buyer's right to possession has terminated, to dismantle and recover them.

5.8 On termination of the Contract, howsoever caused, the Company's rights contained in this Condition 5 shall remain in effect.

5.9 The Company may, in its sole discretion, register as a charge at the Companies Registration Office (in the name of the Buyer in favour of the Company) any charge created by any retention of title provision in this clause 5.

6. PRICE/PAYMENT

6.1 Unless otherwise agreed in writing by the Company, the price for the Goods and/or Services shall be the price quoted, or where no price has been quoted, the price listed in the Company's published price list current at the date of the Company's acceptance of the Buyer's order. The price is exclusive of any value added tax or other taxes and all costs or charges in relation to packaging, carriage, insurance and installation all of which amounts shall (where applicable) be separately itemised on the Company's invoice and paid by the Buyer.

6.2 The Company reserves the right by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Company of the Goods and/or Services, including the costs of labour, materials including shipment and storage of materials, or other costs of manufacture, any change in delivery dates, quantities or specifications for Goods or performance dates for the Services which are requested by the Buyer, or any delay caused by instructions of the Buyer or failure of the Buyer to give the Company accurate information or instructions.

6.3 Subject to Condition 6.5, the Buyer shall pay all invoices within thirty days of the invoice date unless otherwise specifically agreed in writing by the Company. Time for payment shall be of the essence.

6.4 No payment shall be deemed to have been received until the Company has received cleared funds.

6.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

6.6 Should a discount for payment within a certain number of days have been agreed in writing by the Company, such period of days shall commence upon the invoice date. The discount shall only apply if there are no other payments overdue from the Buyer to the Company.

6.7 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

6.8 If the Buyer fails to make any payment on the due date then (without limiting any other rights or remedies available to the Company) the Company may charge the Buyer interest (both before and after judgement) on the amount unpaid at a rate calculated as the European Central Bank reference rate plus 8% as amended from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) and the Company shall also be entitled to recover from the Buyer its expenses (including legal fees) and costs of collection from the Buyer.

6.9 All payments due to the Company remain unpaid after the due date for payment the Company shall not be obliged to continue any further deliveries and/or performance under the Contract.

7. INSTALLATION AND TECHNICAL CHANGES

7.1 Installation of all Goods must be carried out in accordance with the Company's specified procedures.

7.2 Where the Company is carrying out the installation of the Goods and/or other Services, the Buyer shall ensure that adequate working space is provided on the date agreed by the parties. Any completion date given shall be an estimate only and is subject to revision.

7.3 The Buyer shall provide the Company and its authorised representatives with unrestricted, safe and uninterrupted access to the site and to all necessary facilities required to enable the Company to install the Goods and/or provide the Services. The Buyer shall cooperate fully with the Company during the installation and shall ensure that the Company has access to the site on the date agreed by the parties. Any completion date given shall be an estimate only and is subject to revision.

7.4 The Buyer shall pay all costs incurred by the Company associated with or resulting from abortive or additional site visits by the Company resulting from any failure by the Buyer to comply with Condition 7.3 and/or from any incomplete, incorrect or inadequate information provided to the Company by or on behalf of the Buyer.

8. QUALITY

8.1 The Company warrants that (subject to the other provisions of these Conditions) upon delivery, and for a period as set out in the statement of warranty for the relevant Goods from the date of delivery, or the date of commissioning if later, (provided that in no case shall the date of commencement of warranty be later than one month after delivery unless agreed in writing by the Company), the Goods shall be free from defect in material and workmanship.

8.2 Subject to the other provisions of these Conditions the Company warrants to the Buyer that the Services will be provided using reasonable care and skill.

8.3 The Company shall not be liable for a breach of the warranty in Condition 8.1 unless (a) the Buyer gives written notice of the defect to the Company within the specified warranty period; and (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.

8.4 The Company shall not be liable for a breach of the warranties in Conditions 8.1 and 8.2 if:

- the Buyer makes any further use of such Goods and/or Services after giving such notice; or
- the defect arises from improper or inadequate maintenance of the Goods by the Buyer, unauthorised modification or misuse, operation outside of the environmental specification for the Goods, inadequate or incorrect maintenance of the site or incorrect installation by the Buyer; or
- the Buyer alters or repairs such Goods and/or Services without the written consent of the Company; or
- the defect in the Goods and/or Services arises from any instructions or requirements of the Buyer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival or any other fault of the Buyer; or
- the defect arises from fair wear and tear, wilful damage, the Buyer's negligence or abnormal working conditions.

8.5 Subject to Conditions 8.3 and 8.4, if any of the Goods do not conform with the warranty in condition 8.1 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company.

8.6 Subject to Condition 8.4 if any of the Services do not conform to the warranty in Condition 8.2 the Company shall at its option correct the defect in the performance of the Services or refund the price of such Services at the pro rata Contract rate.

8.7 If the Company complies with Conditions 8.5 and 8.6 it shall have no further liability for a breach of the warranties in Conditions 8.1 and 8.2 in respect of such Goods and Services.

9. LIMITATION OF LIABILITY

9.1 Subject to Conditions 4 and 8 the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of (a) any breach of these Conditions; (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and (c) any representation,

statement or tortious act or omission including negligence arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1893, as amended by section 10 of the Sales of Goods and Supply of Services Act 1980) are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these Conditions excludes or limits the liability of the Company:

- for death or personal injury caused by the Company's negligence; or
- under section 2(3) of the Liability for Defective Products Act 1991; or
- for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- for fraud or fraudulent misrepresentation.

9.4 Subject to Conditions 9.2 and 9.3:

- the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

10.1 The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, drawings, inventions, processes or initiatives which are of a confidential nature and have been disclosed by the Company or its agents and any other confidential information concerning the Company's business or the Goods or Services which the Buyer may obtain and the Buyer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Buyer's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Buyer.

10.2 The Buyer hereby acknowledges that all intellectual property in such confidential information remains vested in and shall continue to be vested in the Company and that the Buyer obtains no licence to use the same save in so far as it is necessary for the proper use of the Goods or Services ordered.

11. ASSIGNMENT

11.1 The Company may assign the Contract or any part of it to any person, firm or company.

11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

12. FORCE MAJEURE

12.1 The Company reserves the right to defer the date of delivery/performance or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company 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 three months, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract with regard to the Goods not yet delivered.

13. INSOLVENCY OF BUYER

13.1 This Clause 13 applies if:

- any of the events referred to in Clause 5.5 (a) occurs in relation to the Buyer; or
- an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- the Buyer ceases, or threatens to cease, to carry on business; or
- the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

13.2 If this clause applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract or suspend any further deliveries and/or performance under the Contract without any liability to the Buyer, and if the Goods have been delivered and/or the Services performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14. GENERAL

14.1 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by Irish law and the parties submit to the non-exclusive jurisdiction of the courts of Ireland.

14.2 Nothing in this Contract shall affect the statutory rights of a person dealing as a consumer.

15. CANCELLATION

The Buyer may cancel any order for Goods and any related Services by notifying the Company in writing not less than 7 days prior to the date the relevant Goods were due to be shipped subject to the payment by the Buyer in cleared funds of 25% of the total price of the relevant order (or, in the case of Goods made in accordance with any specification or requirements provided by the Buyer, 100% of the total price of the relevant order) less any amount already paid by the Buyer in respect of the cancelled Goods and/or Services within 10 days of the date of such cancellation notice was sent. The Buyer shall send any notice of cancellation to Uninterruptible Power (KUP Ireland) Ltd (Company number 308576) Unit E, Baldonnell Business Park, Baldonnell, Dublin 22, D22 X5R2, Ireland.