



TERMS AND CONDITIONS
SALE OF GOODS OR SERVICE

SOLAR AND WIND APPLICATIONS LIMITED

1 DEFINITIONS

1.1 In this document the following words and expressions shall have the following meanings:-

"**Buyer**" means XXXXXXXXXXXXXXXXXXXX

"**Buyer's Purchase Order**" means any order either written or verbal for Goods or Services by the Buyer in accordance with Clause 2.1;

"**Contract**" means any verbal agreement and in particular the Quotation sent by the seller to the buyer XXXXXXXXXXXXXXXX the contract between the Seller and the Buyer for the sale and purchase of the Goods or provision of Services incorporating these Terms and Conditions;

"**Goods**" means any goods in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them) and any goods in relation to which the Seller is providing Services on behalf of the Customer;

"**Price**" means the price of the Goods and Services to be paid by the Buyer as determined in accordance with Clause 3.1;

"**Seller**" means Solar and Wind Applications Limited, a company registered in Scotland with number SC229340 and having its registered office at c/o Trabboch House, Near Stair, Ayrshire, KA5 5HX, either trading in its own name or through such of its trading divisions as shall be identified on the face of the Contract;

"**Services**" means any services agreed in the Contract to be supplied to the Buyer by the Seller, including but not restricted to the provision of consultancy in the field of commercial applications for wind and solar power; and

"**Terms and Conditions**" means the terms and conditions contained in this document.

1.2 Save to the extent that the context or the express provisions of these Terms and Conditions require otherwise, in these Terms and Conditions:-

- (a) words importing the singular shall include the plural and vice versa;
- (b) words importing any gender shall include all other genders;
- (c) any reference to a Clause, the Schedule or part of the Schedule is to the relevant clause, schedule or part of the schedule of or to these Terms and Conditions;
- (d) references to these Terms and Conditions or any other document shall be construed as references to these Terms and Conditions or that document as modified, amended, varied, supplemented, assigned, notated or replaced from time to time;
- (e) references to any statute or statutory provision (including any subordinate legislation) include any statute or statutory provision which amends, extends, consolidates or replaces the same, and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (f) references to a "person" includes any individual firm, company, corporation, body corporate, government, state or agency of a state, trust or foundation, or any unincorporated body, association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

1.3 The headings to Clauses are inserted for convenience only and shall not affect the interpretation or construction of these Terms and Conditions.

2 ORDERING GOODS / SERVICES



- 2.1 The Buyer's Purchase Order shall specify in detail the nature of the Goods/Services required with reference to the Seller's written quotation at the time the Buyer's Purchase Order is made.
- 2.2 Any order for Goods or Services sent to the Seller by the Buyer shall be deemed to be an offer and shall only be accepted by means of the Seller's standard acknowledgement form and shall be deemed to be subject to these Terms and Conditions to the exclusion of all other terms and conditions.
- 2.3 Each verbal or written order for Goods or Services accepted by the Seller shall be deemed to be an individual legally binding contract (a "Contract") between the Seller and the Buyer.
- 2.4 Following the receipt of the order, the Buyer has a period of 14 days to notify the seller in writing that he wishes to cancel such order.
- 2.5 In the event that the buyer cancels an order under this clause 2.4, neither party will have any further liability to the other in respect of the order.

3 SPECIFICATION OF GOODS / SERVICES

- 3.1 All Goods or Services shall be required only to conform to the specification in the Contract or as otherwise expressly agreed in writing.

3.2 PRICE

- 3.3 The Price shall be the price specified in the Contract subject to the following terms and conditions:-
 - 3.2 If the words "Fixed Price" appear in relation to the Price quoted in any estimate signed by the Seller the Price shall remain fixed only for the supply of the Goods or Services which form part of the Contract.
 - 3.3 If the Seller and the Buyer agree any variation to the Contract whereby additional work is to be undertaken by the Seller then the Seller shall reserve the right (whether or not the estimate or order acknowledgement form contain the words "Fixed Price") to reflect any increase in Price and cost of raw material, labour and overhead expenses that may have taken place since the commencement of the original Contract works in the Price of such additional work.
 - 3.4 Any variation by the Buyer in the design, quantification or specification of the work pursuant to the Contract following any instruction by the Buyer shall allow the Seller to increase the Price to reflect any additional costs the Seller may be put to as a result thereof.
 - 3.5 In the event that the Price is identified in currency other than pounds sterling ("a foreign currency") the Seller reserves the right to adjust the Price should there be any variance in the exchange rate for such currency at the date of payment from the exchange rate prevailing for pounds sterling and that currency at the date of the Contract.
 - 3.6 The Price and all prices quoted are strictly net (unless specifically stated otherwise). In addition to the Price the Buyer shall pay Value Added Tax where applicable at the appropriate rate prevailing at the time payment is due.

4 PAYMENT

- 4.1 Payment of the Price shall be made by the Buyer, in cleared funds, to the Seller as specified on the quotation. Time for payment of the Price shall be of the essence of the Contract. The Seller shall be entitled to invoice the Buyer at the time of delivery of the Goods or completion of the Services.
- 4.2 In respect of any Goods to be delivered or Services to be supplied to the Buyer or its nominees at any address overseas then, if required by the Seller, payment of the Price shall be made by the Buyer prior to the despatch of any Goods or the provision of any Services by means of an irrevocable letter of credit opened with and confirmed by a United Kingdom clearing bank and approved by the Seller's bankers or alternatively by such other means as may be agreed in writing between the Seller and the Buyer.
- 4.3 The Seller shall have the right to charge interest which shall accrue on a day to day basis on all monies which at any time may be overdue for payment pursuant to the terms of the Contract at the rate of 3% per month above the base lending rate of the Bank of Scotland plc from time to time.



5 DELIVERY

- 5.1 Unless otherwise agreed, delivery of Goods and performance of the Services shall take place at the address specified in the Buyer's Purchase Order and the Buyer shall be deemed to have accepted the Goods or Services upon their delivery or performance respectively.
- 5.2 Any date or time given by the Seller for delivery or performance shall be an estimate only. Time for delivery shall not be of the essence of the Contract.

6 RISK

- 6.1 All risk in the Goods shall pass to the Buyer upon commissioning of the installation. All risk in the Goods shall remain with the Seller throughout the provision of the Services until system is commissioned by Seller.
- 6.2 The Buyer will bear the risk of loss or damage to the Goods only once system has been commissioned by Seller. Upon commissioning of system, it is advised that the Buyer shall keep the Goods adequately insured.

7 TITLE TO GOODS

- 7.1 The Seller warrants that the Seller has good title to the Goods and that it will transfer such title as it may have in the Goods to the Buyer pursuant to this Clause 7.
- 7.2 Unless otherwise agreed in writing between the parties the property and title in the Goods shall not pass to the Buyer but shall remain vested in the Seller until the whole of the Price shall have been paid.
- 7.3 The Buyer shall not seek to sell or dispose of any part of or any individual consignment of or any delivery of Goods supplied by the Seller to the Buyer until the whole of the Price and all other sums due in respect thereof pursuant to any Contract between the Seller and the Buyer shall have been received by the Seller.
- 7.4 In the event that the Buyer shall seek to dispose of any such Goods before payment in full has been made by the Buyer to the Seller, the Buyer undertakes to hold all proceeds of sale of such goods in trust for the Seller and to hold such proceeds of sale in a separate account to the order of the Seller.
- 7.5 In the event that any outstanding amount of the Price in relation to any Services remains unpaid for 7 days after the date on which it becomes overdue, as set out in Clause 5.1, Seller can take a lien over the Goods in security of the outstanding amount of Price remaining unpaid under the Contract relating to those Goods. In this event, the Seller shall have the right to enforce the lien by selling the Goods on an arms' length basis to any third party in order to recover the outstanding sums due by the Customer, provided that, if the proceeds of such sale exceed the amount of the Price due by the Buyer to the Seller, the Seller shall pay any such excess to the Buyer.

8 SELLER'S OBLIGATIONS

- 8.1 The Seller shall use reasonable skill and care in the provision of the Services. In the event of accidental damage incurred during the installation, the Seller warrants to repair the damage at the Seller's cost. The Seller will not, however, have any liability whatsoever, to any damage to the property incurred prior to the provision of services provided by the Seller, or to any damage caused by persons or goods, not associated with the Seller, at any time before, during or after the services provided by the Seller.

9 LIMITATION OF LIABILITY

- 9.1 Subject to this Clause 9, the Seller's liability to the Buyer under any Contract howsoever arising shall be limited to the price of the Goods or Services specified.
- 9.2 Nothing contained in these Terms and Conditions shall be construed so as to exclude or limit the liability of the Seller for breach of the warranty contained in Clause 7.1 or for breach of warranty as to quiet possession, as implied by section 12 of the Sale of Goods Act 1979.
- 9.3 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's fraudulent misrepresentations or negligent actions, or those of its employees or agents.

10 INSOLVENCY OF THE BUYER

If the Buyer commits an act of bankruptcy or insolvency or becomes apparently insolvent or if the Buyer's estate is sequestrated or a Receiver or Liquidator is appointed to the Buyer or the Buyer seeks to enter into any



voluntary arrangement with his creditors, the Seller shall be entitled to require the Buyer at the Buyer's own expense to return to the Seller all goods which have been supplied by the Seller to the Buyer pursuant to any Contract and for which payment in full has not been tendered and made, and should the Buyer fail to do so the Seller is irrevocably authorised by the Buyer without notice to enter any premises in which such goods are situated for the purpose of collecting and removing such goods without any liability upon the Seller and the Buyer shall be responsible for all the Seller's costs and expenses in connection with such collection and removal.

11 INTELLECTUAL PROPERTY RIGHTS

11.1 The Buyer shall indemnify the Seller against all direct and indirect losses (including consequential loss and loss of profit) arising from any infringement of any third party's intellectual property rights by the use of any materials supplied to the Seller by the Buyer.

11.2 All intellectual property rights in any specifications, plans, drawings, process information, patterns or designs used by the Seller in connection with the Contract (other than those supplied by the Buyer) shall remain the property of the Seller or its third party licensors, and any information derived therefrom or otherwise communicated to the Buyer in connection with the Contract shall be kept secret and shall not, without the consent in writing of the Seller, be published or disclosed to any third party or made use of by the Buyer except for the purpose of implementing the Contract or where such information is in the public domain or disclosure is required by law or any recognised stock exchange. Any specification, plans, drawings, process information, patterns or designs supplied by the Seller must be returned to the Seller on fulfilment of the Contract.

Where in providing the Services, it is necessary for the Seller to use any intellectual property rights used by the Buyer and belonging to a third party, the Buyer shall take all steps necessary to ensure that licenses from those third parties are obtained to allow the Seller to use such intellectual property for the purpose of providing the Services.

11.3 For the purposes of the Contract, "intellectual property rights" shall mean patents (or applications therefor), registered designs (or applications therefor), design rights, registered and unregistered trade marks and copyright and any other intellectual property rights of whatever nature and wherever arising (including goodwill, know-how and confidential information).

12 TERMINATION

12.1 The Seller may terminate any Contract forthwith by notice in writing to the Buyer if the Buyer:-

12.1.1 is unable to pay its debts or enters into liquidation (other than for the purpose of effecting a reconstruction or amalgamation) whether compulsorily or voluntarily or compounds with or convenes a meeting of its creditors or has a receiver appointed of all or any part of its assets or takes or suffers any similar action in consequence of a debt, or ceases for any reason to carry on business;

12.1.2 fails to pay within the period provided for in Clause 5.1, without prejudice to the Seller's right to receive interest for non-payment.

13 CONSEQUENCES OF TERMINATION

13.1 Upon the termination or expiry of any Contract howsoever arising:

13.1.1 The Seller shall be entitled to invoice the Buyer for Services performed under that Contract up until the date of termination and the Buyer shall pay such invoice in accordance with these Terms and Conditions.

13.1.2 Subject to the Seller's lien for non-payment under Clause 8.5, the Seller shall deliver to the Buyer, at the Buyer's expense, the Goods relating to that Contract.

14 FORCE MAJEURE

14.1 If performance of the Contract by the Seller shall be delayed by any circumstances or conditions beyond the control of the Seller including (but without prejudice to the generality of the foregoing) any war, intellectual dispute, strike, lockout, riot, malicious damage, fire, storm, flood, Act of God, accident, failure of production equipment, any statute, rule, byelaw, order, regulation or requisition made or issued by any government department, local or other duly constituted authority, then the Seller shall have the right to suspend further performance of the Contract until such time as the cause of delay shall no longer be present.

15.2 If performance of the Contract by the Seller shall be delayed by any such circumstances or conditions beyond the control of the Seller for a period of three months, then the Seller shall have the right to be discharged from further performance of and liability under the Contract.



15 NOTICES

15.1 Any notice to be given under, or in connection with the matters contemplated by, these Terms and Conditions shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by facsimile or pre-paid recorded delivery or registered post to the registered office or principal place of business of the other party (marked for the attention of the Managing Director), (or as otherwise notified by that party hereunder). Any such notice shall be deemed to have been received:-

- if delivered personally, at the time of delivery;
- in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting;
- in the case of registered airmail, five days from the date of posting; and
- in the case of fax, at the time of transmission.

If deemed receipt occurs before 9am on a business day the notice shall be deemed to have been received at 9am on that day and if deemed receipt occurs after 5pm on a business day, or on a day which is not a business day, the notice shall be deemed to have been received at 9am on the next business day. For the purpose of this Clause 16, "business day" means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent.

16 WAIVER

No failure or delay by any party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver nor shall any single or partial exercise preclude any further exercise of any right, power or privilege under these Terms and Conditions or otherwise.

17 SEVERABILITY

If any provision of these Terms and Conditions shall be found by any court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect the other part of that provision or the other provisions of these Terms and Conditions which shall remain in full force and effect.

18 GOVERNING LAW

The interpretation of these Terms and Conditions and any Contract formed under these Terms and Conditions shall be governed by and construed in accordance with the law of Scotland and the parties hereto submit to the non-exclusive jurisdiction of the Scottish courts.

I, the Buyer, hereby agree to be bound by the Terms and Conditions detailed on this and the preceding four pages.

At.....ADDRESS

On the.....day, ofMonth,Year ,

By

.....Signature