

## TERMS AND CONDITIONS

### 1. DEFINITIONS

In this document the following words shall have the following meanings:

**Agreement** means the Conditions, an Order Acknowledgement and the relative Purchase Order for Goods and if there shall be any inconsistency between the documents comprising an Agreement, they shall have precedence in the order herein listed;

**Seller** means Westech Solar (UK) Ltd of Unit 1, Bobby Fryer Close, Garsington Road, Oxford, OX4 6ZN.

**Buyer** means the organisation or person with whom an Agreement is made by the Seller, whether directly or indirectly through an agent or factor who is acting for or instructed by or whose actions are ratified by such organisation or person.

**Conditions** means these terms and conditions.

**Goods** means products supplied by the Seller under contract.

**Parties** means the Buyer and the Seller

**Purchase Order** means an order for the purchase of Goods submitted to the Seller by the Buyer.

### 2. GENERAL

**2.1** The Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer, whether in the negotiation or at any stage in the dealings between the Parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been agreed by the Seller in writing.

**2.2** Any variation to the Conditions (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed in writing by and signed by a director on behalf of the Seller.

**2.3** The Buyer shall not be entitled to cancel any contract without the consent of the Seller, which if given shall be deemed to be given on the express condition that the Buyer shall indemnify the Seller against all loss, damage, costs, claims or actions arising out of such cancellation.

**2.4** The Seller supplies the Goods only and does not provide any services for the installing of the Goods. The installation of the Goods is the responsibility of the Buyer.

### 3. ORDERS

**3.1** Unless verbal or telephone Purchase Orders and any variations to Purchase Orders are confirmed in writing by the Buyer, the Seller shall not be responsible for errors or subsequent misunderstandings.

**3.2** Notwithstanding that the Seller may have given a detailed quotation, no stock can be held or reserved without an official order and delivery date.

### 4. PRICE AND PAYMENT

**4.1** All prices estimated, quoted or invoiced are in Sterling (UK Pounds)

**4.2** The Seller's prices are subject to adjustment to take account of any variation in the Seller's costs including (but not limited to) variations in wages, the cost of materials, exchange rate fluctuations, alterations of duties and other costs since the date of the Seller's quotation or (if no quotation is issued) the Purchase Order. The Seller accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted or the Purchase Order is submitted (as applicable). The invoice so adjusted shall be payable as if the price set out therein were the original Agreement price.

**4.3** The price is exclusive of VAT, which will be charged at the appropriate rate. The price is also exclusive of transport, packaging, insurance and any other applicable duties or taxes, unless otherwise explicitly agreed.

**4.4** The Seller shall be entitled to render an invoice for the Goods sold under an Agreement as soon as the Purchase Order is received. All invoices payments are made prior to delivery unless special terms are agreed in writing from the Seller.

**4.5** In the case that the payment is agreed in writing by the Seller to be paid by the Buyer within 30 days of the date of the Seller's invoice without deduction or withholding and free of set off or counterclaim. Time for payment shall be of the essence of an Agreement.

**4.5.1** The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due until the date of payment at the rate of 2.50% per annum above the base rate of Barclays Bank PLC.

**4.5.2** If the payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:

- require payment in advance of delivery in relation to any Goods not previously delivered;
- refuse to make delivery of any undelivered Goods whether ordered under the Agreement or not and without incurring any liability whatever to the Buyer for nondelivery or any delay in delivery;
- terminate the Agreement.

## **5. SPECIFICATION OF GOODS**

**5.1** No description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Seller and no representation written or oral, correspondence or statement shall form part of any Agreement.

**5.2** Goods described in the Seller's literature or elsewhere are subject to a continuing process of technical change and development and the Seller therefore reserves the right to alter specifications without notice at any time before delivery. All descriptions, illustrations, specifications and dimensions are approximate and are only intended to present a general guideline as to the type of Goods represented thereby. It is therefore agreed by the Buyer that Goods supplied may not comply in all respects with the description in the Seller's literature or elsewhere.

## **6. DELIVERY**

**6.1** The date of delivery specified by the Seller is an estimate only given in good faith. The Seller undertakes to use reasonable endeavours to dispatch the Goods on the agreed date, but does not guarantee to do so, it accepts no liability whatsoever for any loss or damage resulting from delay howsoever the same shall have been caused. Time of delivery shall not be the essence of the Agreement, unless expressly agreed in writing by the Seller. Please note that where the Seller physically delivers the Goods there may be an additional delivery charge, which the Buyer will be notified of before delivery or will be stated on the order form.

**6.2** Goods collected by the Buyer from the Seller's premises shall be deemed to be delivered and risk shall pass to the Buyer when they have been loaded on to the Buyer's vehicle or are otherwise in the Buyer's possession.

**6.3** In the case of orders for delivery outside the UK, delivery shall (unless otherwise stated overleaf) be effected:

**6.3.1** In the case of FOB contracts (as defined in Incoterms 2000), by delivery to the ship or aircraft at the place of export or to the specified carrier or its duly authorised agent of the Goods and to the confirming house or its agents of the bills of lading, airway bill or other document in respect of the Goods. Or

**6.3.2** in the case of CIF and CFR contracts (as defined in Incoterms 2000), by delivery to the seller or ship or its duly authorised agent of the bills of lading, airway bill or other document in respect of the Goods.

**6.4.** Notwithstanding that the stated price may include the cost of carriage from the Seller's premises the risk in the Goods sold shall pass to the Buyer upon their transfer at such premises onto the carrier's or Buyer's transport save that where the contract is stated to be FOB, CIF and CFR the risk shall pass to the Buyer when the Goods are delivered onto the ship or aircraft.

**6.5.** The Buyer shall keep the Goods fully insured against all risks normally insured against at least throughout the period between the risk herein passing to the Buyer and the property therein ceasing to remain with the Seller.

**6.6.** Goods transported by the Seller shall be deemed to be delivered when they are ready to be unloaded at the site specified by the Buyer.

**6.7** When delivery is refused by the Buyer or is delayed, suspended or made by installments at the request of the Buyer, risk in the Goods (or any of them not delivered in these circumstances) shall pass to the Buyer immediately upon such refusal or request by the Buyer and (without prejudice to the generality of the foregoing) the Seller shall place such Goods into store and the cost of storage and insurance of such Goods and of any attempted delivery of such Goods shall be for the Buyer's account.

**6.8** The Buyer agrees that Section 32(3) of the Sale of Goods Act 1979 shall not apply to Goods sent by the Seller.

**6.9** Upon delivery of the Goods in each case the Buyer shall sign the Seller's delivery note and check the consignment. No liability for non-delivery loss of or damage to the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the Agreement will attach to the Seller unless claims to that effect are notified in writing by the Buyer to the Seller: (a) within 5 working days of delivery for loss damage or non-compliance with the Agreement or (b) for non-delivery within 10 days of the delivery date specified by the Seller. If the Buyer fails to give such notice the Goods shall be deemed to be in all respects in accordance with the Agreement and, without prejudice to earlier acceptance by the Buyer, the Buyer shall be bound to accept and pay for the same accordingly.

**6.10** In the event of a valid claim for non-delivery loss damage or non-compliance with the Agreement the Seller undertakes at its option either to repair or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery loss damage or non-compliance.

**6.11** The Buyer shall inspect the Goods for shade and quality and accept the Goods before they are used, no claims will be considered after the Goods have been used.

## **7. TITLE**

**7.1** In spite of delivery having been made, property of the Goods shall not pass from the Seller until the Buyer has paid the price of all the Goods under the Agreement and no other sums are due from the Buyer to the Seller.

**7.2** Until the property of the Goods passes to the Buyer, the Buyer shall hold the Goods and each of them on a fiduciary basis as a custodian/bailee for the Seller. The Buyer shall store the Goods separately from all other Goods in its possession and marked in such a way that they are clearly identified as the property of the Seller.

The Buyer shall not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods. The Buyer shall maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for the full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.

**7..** Notwithstanding that, the Goods remain the property of the Seller; the Buyer may sell the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Until property of the Goods passes from the Seller, the entire proceeds of sale or otherwise of the Goods shall be held on trust for the Seller.

7.4 Until such time as property of the Goods passes from the Seller to the Buyer, the Buyer shall, upon request, deliver up such Goods as have not ceased to be in existence or resold, to the Seller. If the Buyer fails to do so, the Seller may enter upon any premises owned or occupied or controlled by the Buyer where the Goods are situated and repossess the Goods.

7.5 The Seller shall have the right to maintain an action for the price of the Goods notwithstanding that title may not have passed to the Buyer.

#### **8. BUYER'S OBLIGATIONS**

8.1 The Buyer shall provide the Seller with any information reasonably required by the Seller as well as obtain all necessary permissions and consents including (without prejudice to the generality of the foregoing) promptly obtaining all necessary import licences, clearances and other consents necessary for the purchase of the Goods.

8.2 Without prejudice to any other rights to which the Seller may be entitled, in the event that the Buyer unlawfully terminates or cancels the Agreement, the Buyer shall be required to pay to the Seller, as agreed damages and not as a penalty, the full amount of any third party costs to which the Seller has committed and in respect of cancellations on less than 5 days' written notice the full price of the Goods as set out in the Agreement, and the Buyer agrees this is a genuine pre-estimate of the Seller's losses in such a case.

#### **9. ALTERATIONS TO THE AGREEMENT**

9.1 The Parties may, at any time, mutually agree upon variations to the Agreement. Any alterations in the scope of Goods to be provided under the Agreement shall be set out in a revised Order Acknowledgement, which shall reflect the changed Goods and price and all other terms agreed between the Parties.

9.2 The Buyer may at any time within 14 days of the Order Acknowledgement request in writing alterations to the Agreement. On receipt of the request for alterations, the Seller shall, within 7 days, or such other period as may be agreed between the Parties, advise the Buyer by notice in writing whether it is prepared to alter the Agreement in accordance with the Buyer's request and, if it is, the basis upon which it is prepared to do so having regard to the changes which the Seller would require to the price and any other terms previously agreed between the Parties ("an alteration notice").

9.3 The Buyer shall, within 7 days of receipt of an alteration notice, or such other period as may be agreed between the Parties, advise the Seller by notice in writing whether or not it wishes the Agreement to be altered on the basis set out in the alteration notice. If such a notice is given by the Buyer, the terms of the altered Agreement shall be set out in a revised Order Acknowledgement.

#### **10. WARRANTY AND GENERAL LIABILITIES**

10.1 The Seller warrants the Goods supplied are free from substantial defects in materials and workmanship PROVIDED ALWAYS that;

10.1.1 the Buyer notifies the Seller in writing of the alleged defects as soon as it becomes aware of them and in any event within two weeks from the date of delivery;

10.1.2 the Seller's liability under this warranty is limited to the repair of the defect or, at the discretion of the Seller, the provision of replacement Goods or the refund of the price paid for the defective Goods; and

10.1.3 any liability on the part of the Seller shall cease upon any of the Goods supplied being blended or mixed with other Goods or upon any manufacturing or other process being applied thereto, or upon the Goods being affixed or applied to any other Goods, property or land. And the Buyer therefore acknowledges that it must take steps to inspect all Goods supplied immediately upon delivery.

10.2 The seller does not exclude or restrict its liability for death or personal injury to the extent that it results from the negligence of the Seller or its employees or agents, or for fraud or fraudulent mis-statement nor in any other circumstances forbidden by law.

10.3 Save as provided in sub clauses (10.1) and (10.2) the Seller hereby excludes to the fullest extent permitted by law, all other liabilities (including liability for its negligence) and all other warranties and conditions whether express or implied and whether arising by common law statute or otherwise other than those relating to title to the goods. In particular but without limitation of the foregoing the Seller shall not be liable for the failure of any Goods supplied to be fit for any particular purpose for which they are required or to comply with any laws, rules or regulations as regards their use or subsequent re-sale.

10.4 Subject to 10.2 above, the Seller shall not be liable for any indirect or consequential loss injury or damage of any nature whatsoever; any loss of profit (direct or indirect); loss of business; depletion of goodwill; or other costs, claims or expenses of any indirect or consequential nature arising out of or in connection with this agreement of any Goods supplied.

10.5 Without in any way limiting the effect of the foregoing the Buyer acknowledges that the provisions of this clause are reasonable having regard to the fact that the Buyer has either inspected the Goods prior to the conclusion of the contract, or has decided at its own risk not to inspect the Goods; and furthermore the Buyer accepts that it should procure insurance cover for such risks as the Buyer considers are of importance to it.

#### **11. RETURNS**

The Seller has absolute discretion whether it accepts Goods returned by the Buyer. Goods supplied for special orders cannot be returned. If Goods are returned they may be only accepted if they are for full cartons only within a two month period from invoice date. Goods that are accepted as returns will be subject to a 20% restocking charge.

## **12. INDEMNITY**

Please note the following important provisions:

The Buyer shall be solely responsible for and shall keep the Seller indemnified against any loss, liability or expense arising directly or indirectly from the negligent, wrongful, or inappropriate (including a failure to follow manufacturers instructions) use or re-sale of the Goods.

## **13. TERMINATION**

**13.1** The Seller may, by written notice, terminate the Agreement immediately if the Buyer is in breach of any of the terms of the Agreement, which, if capable of remedy, is not remedied within 7 days of a notice served by the Seller requiring such breach to be remedied. Failure to pay any sums due is a breach of the terms of the Agreement, which is not capable of remedy.

**13.2** The Agreement shall be terminated if an order is made for bankruptcy of the Buyer or an effective resolution is passed for the winding-up of the Buyer or the Buyer makes a composition with creditors or if a supervisor, receiver, administrator, administrative receiver or other encumbrancer takes possession of or is appointed over the whole or any part of the assets of the Buyer.

**13.3** The Agreement shall be terminated if either party ceases to carry on its business or substantially the whole of its business or where either party is declared insolvent.

**13.4** Termination of the Agreement shall not affect any rights or obligations of the Parties arising prior to such termination.

## **14. INTELLECTUAL PROPERTY RIGHTS**

The specification and design of the Goods and all Intellectual Property Rights therein shall as between the Parties be the property of the Seller. Where any designs or specifications have been supplied by the Buyer for manufacture by the Seller or to the order of the Buyer then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party and the Buyer shall indemnify the Seller against all claims, costs, damages and expenses which the Seller may incur and which arise, directly or indirectly, from the Buyer's breach of such warranty.

## **15. FORCE MAJEURE**

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, terrorism, explosion, riot, acts, restrictions, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled in these circumstances to delay or cancel delivery or to reduce the amount delivered.

## **16. ASSIGNMENT**

**16.1** The Buyer shall not be entitled to assign an Agreement or any part of it without the prior written consent of the Seller.

**16.2** The Seller may assign an Agreement or any part of it to any person, firm or company.

## **17. WAIVER**

The failure by either party to enforce, at any time or for any period, any one or more of the terms and conditions of the Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Agreement.

## **18. SEVERABILITY**

If any term or provision of the Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## **19. RIGHTS OF THIRD PARTIES**

The Parties do not intend any part of the Agreement to be enforceable by any person not a party to it, by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **20. GOVERNING LAW**

The Agreement shall be governed by and construed in accordance with the law of England and Wales and the Courts of England and Wales shall have non-exclusive jurisdiction to hear all disputes arising in connection with the Agreement.