

CERES POWER LIMITED STANDARD TERMS OF PURCHASE OF GOODS

1. DEFINITIONS AND INTERPRETATION

1.1 In these Purchase Terms, the following definitions apply:

Business Day: means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

Ceres: means Ceres Power Limited (Company No. 04222409), registered address: Viking House, Foundry Lane, Horsham, West Sussex, RH13 5PX PO;

Contract: means the Purchase Order and the Supplier's acceptance of the Purchase Order;

Goods: means any goods (or any part of them) specified in a Purchase Order;

Premises: means the premises at which the Goods are to be delivered as notified by Ceres to the Supplier;

Price: means the price of the Goods as set out in the Purchase Order;

Purchase Order or PO: means the purchase order issued by Ceres incorporating these Terms, including any special terms and conditions set out in that Purchase Order and any documents incorporated by express reference in that Purchase Order;

Purchase Terms: means these standard terms of purchase and any special terms included in the PO; and

Supplier: means the person, company or firm set out in the PO as supplier of the Goods.

2. BASIS OF CONTRACT

2.1 The PO constitutes an offer by Ceres to purchase Goods from the Supplier in accordance with these Purchase Terms.

2.2 The PO shall be deemed accepted on the earlier of:

- (a) the Supplier accepting a PO in writing; or
- (b) any act by the Supplier consistent with fulfilling the PO, at which point and on which date the Contract shall come into existence.

2.3 These Purchase Terms apply to each Contract to the exclusion of any other terms on which any quotation or acknowledgement has been given to Ceres or subject to which the PO is accepted or purported to be accepted by the Supplier. No addition to or variation of or exclusion of these Purchase Terms or any of them shall be binding upon Ceres, unless confirmed in writing by Ceres.

3. SUPPLY OF GOODS

3.1 The Supplier shall supply the Goods in accordance with the Contract.

3.2 Unless otherwise agreed in writing, forecasts provided by Ceres are estimates only and non-binding.

3.3 The Supplier shall ensure that Goods shall:

- (a) correspond with their description and any applicable goods specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose that Ceres expressly or impliedly makes known to the Supplier;
- (c) be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery (except for shelf-life products, for which such warranty shall be agreed in writing between the Parties); and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.4 Ceres shall have the right to inspect and test the Goods at any time before delivery. If, following such inspection or testing, Ceres considers that the Goods do not conform or are unlikely to be as warranted under clause 3.2, or otherwise not in compliance with this clause 3, Ceres shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure that the Goods are or will be as warranted under clause 3.2. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

4. DELIVERY, RISK AND TITLE

4.1 The Supplier shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and that each delivery of the Goods is accompanied by a delivery note which states the number of the PO, and the quantity and description of Goods in each consignment as well all SPM documents required by Ceres.

4.2 The Supplier shall not deliver the Goods in instalments without Ceres's prior written consent.

4.3 Time shall be of the essence for delivery of the Goods in accordance with the Contract.

Domestic Deliveries

4.4 The Supplier shall deliver the Goods to the Premises on the date(s) set out in the PO (or, if no such date is specified, as instructed by Ceres) during Ceres's usual business hours. Ceres reserves the right to amend any delivery instructions on reasonable written notice to the Supplier.

4.5 Unless otherwise agreed in writing between the parties, delivery of the Goods shall be deemed to be made on completion of safe unloading of the Goods at the Premises.

4.6 Transit and offloading of the Goods shall be at the Supplier's risk. Title and risk in the Goods shall pass to Ceres on completion of delivery.

International Deliveries

4.7 Unless otherwise specified in the PO, the Supplier shall deliver the Goods Delivered Duty Paid (Incoterms Edition 2010) to the Premises.

5. WARRANTIES

5.1 The Supplier warrants, undertakes and represents to Ceres that:

- (a) Ceres's receipt and use of the Goods in accordance with the terms of this Contract will not infringe the intellectual property rights of, nor any duty of confidentiality owed to, any third party;
- (b) it shall at all times have and maintain all necessary permits, consents, licences and authorisations that are required to fulfil its obligations to Ceres under the Contract; and
- (c) in relation to deliveries in the United Kingdom from a territory outside the United Kingdom, it shall obtain all the necessary licenses for exportation, transportation and importation into the United Kingdom of the Goods, shall satisfy itself that such licences have been properly obtained and comply with the existing legislation and shall ensure that these licences are delivered to Ceres where required by Ceres to enable import clearance without demurrage.

5.2 The warranties in this clause 5 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or repaired Goods provided by the Supplier.

6. CERES'S REMEDIES

6.1 If the Supplier fails to deliver the Goods by the applicable date, Ceres may (in addition to other rights and remedies at law):

- (a) refuse to accept subsequent delivery of Goods under the Contract;
- (b) recover from the Supplier any costs incurred by Ceres in obtaining substitute goods; and/or
- (c) where Ceres has paid in advance for Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier.

6.2 If the Supplier has delivered Goods which have a defect, then Ceres may:

- (a) reject all or any part of relevant Goods and require the repayment of any part of the Price which has been paid and to recover from the Supplier any expenditure incurred by Ceres in obtaining substitute goods from a third party; and/or
- (b) require the Supplier to repair the Goods or (at Ceres's sole option) to supply replacement Goods in accordance with the Contract as soon as reasonably practicable (and the provisions of this clause 6 shall apply to any such repaired or replaced Goods).

6.3 Ceres shall not be deemed to have accepted any Goods until it has had a reasonable period of time in which to inspect or test them following delivery or, if later, within a reasonable time after any defect has been apparent.

7. PRICE AND PAYMENT

7.1 Ceres shall pay the Price as set out in the Contract.

7.2 The Price for the Goods shall be exclusive of any applicable VAT (which shall be payable by Ceres subject to receipt of a VAT invoice) but inclusive of all other charges, including the costs of packaging, insurance and carriage of the Goods, except for international deliveries where the Incoterm applicable may provide otherwise.

7.3 The Price shall be inclusive of any expenses incurred by the Supplier and the cost of any materials used by the Supplier for the supply of the Goods. No extra charges shall be effective unless agreed in writing and signed by Ceres before they are incurred.

7.4 Unless otherwise stated in the PO, the Supplier may only invoice Ceres on or after delivery of the Goods.

7.5 Ceres shall pay undisputed invoices within thirty (30) days of receipt of a valid and accurate invoice.

7.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of two per cent (2%) per annum above Natwest Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

8. INTELLECTUAL PROPERTY

8.1 Nothing in these Purchase Terms shall affect the intellectual property rights of the parties.

9. INSURANCE, LIMITATION OF LIABILITY AND INDEMNITY

9.1 During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, appropriate insurance policies to cover the liabilities that may arise under or in connection with the Contract.

9.2 Nothing in the Contract shall exclude or restrict the liability of either party for: (i) death or personal injury resulting from negligence; (ii) fraud or fraudulent misrepresentation; (iii) breach of confidentiality or (iv) any liability which cannot be excluded or limited by law.

9.3 Subject to the provisions of clauses 9.2, Ceres's total aggregate liability, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise for any loss or damage, costs or expenses arising under

- on in connection with the Contract shall be limited to the price of the Goods under the Contract.
- 9.4 Subject to the provisions of clauses 9.2 and 9.5, neither party shall be liable to the other whether in contract, tort, negligence, breach of statutory duty or otherwise for loss of profit, revenue, business or use (in each case whether direct or indirect) or any indirect or consequential loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with the Contract.
- 9.5 The Supplier shall indemnify, hold harmless and keep indemnified Ceres against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses and all interest, penalties and legal costs (calculated on a full indemnity basis)) suffered or incurred by Ceres as a result of or in connection with:
- (a) any claim made against Ceres for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods;
 - (b) any claim made against Ceres by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods or the performance of the Supplier's obligations under the Contract; and
 - (c) any claim made against Ceres by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract.
- 10. TERMINATION**
- 10.1 Ceres may terminate the Contract with immediate effect by notice in writing to the Supplier if:
- (a) the Supplier commits a material breach of the Contract which is irremediable or, in the case of remediable breach, fails to remedy the breach as soon as reasonably possible and in any event within fourteen (14) days of being asked to do so in writing; or
 - (b) the Supplier is unable to pay its debts as they become due, ceases or threatens to cease business, or commits an act of insolvency/bankruptcy, or it or a third party takes action for it to go into liquidation unless this is to reconstruct or merge the company, or if an administrator, administrative receiver, receiver or manager is appointed of any part of its business, or if anything analogous to any of those events occurs in any jurisdiction.
- 10.2 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry and any clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 11. FORCE MAJEURE**
- 11.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure results from an event, circumstance or cause beyond its reasonable control ("Force Majeure Event").
- 11.2 If a Force Majeure Event prevents, hinders or delays the affected party's performance of its obligations for a continuous period of more than ten (10) Business Days, the party not affected by the Force Majeure Event may terminate the Contract by giving five (5) Business Days' written notice to the affected party.
- 12. CONFIDENTIAL**
- The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by Ceres or its agents and any other confidential information concerning Ceres's business or its products which the Supplier may obtain and the Supplier 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 its obligations to Ceres and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier. For the avoidance of doubt, the terms and the existence of the Contract between the Parties shall be considered as confidential information.
- 13. CERES' PROPERTY**
- Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by Ceres to the Supplier or not so supplied but used by the Supplier specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of Ceres but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to Ceres and shall not be disposed of other than in accordance with Ceres's written instructions, nor shall such items be used otherwise than as authorised by Ceres in writing.
- 14. GENERAL**
- 14.1 The Supplier may not assign, transfer, charge, mortgage, subcontract, novate or otherwise dispose of any of its rights or obligations under the Contract without the prior written consent of Ceres. Ceres may, at any time, assign, transfer, charge, mortgage, subcontract, delegate or deal in any other manner with all or any of its rights and obligations under the Contract. In the event Ceres permits the Supplier to subcontract any of its obligations under this Agreement, the Supplier shall remain fully responsible for the performance of its obligations under this Agreement.
- 14.2 Notices given under the Contract shall be in the English language, in writing, addressed to a party at its registered office (or such other address as the relevant party may notify to the other party) and shall be delivered either by: (i) email; (ii) first class post; or (iii) commercial courier. A notice is deemed to have been received: after successful transmission, if sent by email; on the second Business Day after posting, if sent by first class post; and, if sent by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 14.3 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 14.4 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.5 Any failure or delay in exercising any right or remedy available to a party under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it limit that party's rights to exercise that or any other right or remedy. Any waiver of any right or remedy under the Contract or by law must be in writing and signed by both parties.
- 14.6 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.7 No variation of the Contract shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 14.8 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.