

SIMPOWER LTD - TERMS AND CONDITIONS OF SALE

The terms of conditions of sale set out below govern all of the supplies of "Goods and Services", as defined below, from Simpower Ltd, the "Supplier". They will replace any terms and conditions contained in any document used by you, the "Customer", and purporting to have contractual effect, and your acceptance of any goods or services from Simpower Ltd indicates your acceptance of these terms of conditions of sale. The following terms and conditions will be incorporated into the contract between the Supplier and the Customer for the sale of goods.

1. INTERPRETATION

1.1 In these terms and conditions unless the context otherwise requires:

"Goods" includes "Finished Goods" purchased from a third party for on-supply, "Cells" means single cells as supplied to Simpower from their supplier, "Packs" that have been assembled by Simpower from single cells as either standalone goods or built into existing/new equipment, "Services" as undertaken.

"Customer" means the person named as Customer purchasing the Goods.

"Supplier" means Simpower Ltd the assembler/supplier of the Goods or Services.

2. Purchase Price

2.1 The purchase price of the Goods, as described on an invoice or quotation, will be that applicable at the date of invoice to the Customer. Prices may be altered without notice; the Supplier reserves the right to alter prices at any time.

2.2 Unless expressly included in the purchase price, Goods and Services Tax, GST, and any other government levies or taxes in respect of the goods or services taxes are the responsibility of the Customer. Where the payment of such taxes or duties is the Supplier's responsibility, the purchase price shall be increased by the amount of such taxes or duties. Where the purchase price expressly includes any taxes or duties, any increase in the amount of such taxes or duties between the date of the contract and the date of delivery of the Goods shall be the responsibility of the Customer and the purchase price shall be increased accordingly. The Customer is bound to pay the Supplier the price once the Supplier accepts the Customer's order.

3. Quotations

Where these terms and conditions of sale form part of a written quotation, the quotation is open for acceptance for thirty (30) days from the date thereof but may be withdrawn by the Supplier at any time before acceptance. The Customer will give written notice of the acceptance of any quotation. A quotation does not give rise to a binding contract until the Customer places an order which the Supplier subsequently accepts.

4. Orders, Delivery & Risk

4.1 The Supplier's standard terms and conditions shall apply to all invoices. By placing an order on the Supplier the Customer endorses these terms and conditions. The Supplier's terms and conditions override those of the Customer. The Supplier remains the sole arbiter to the terms of the sale. Acceptance of an order by Simpower Ltd in no way contracts acceptance of any terms and conditions implied by the Customer on their purchase order.

4.2 The Supplier reserves the right at any time after receipt of the Customer's order to accept or decline the order for any reason. The Supplier also reserves the right at any time after receipt of the Customer's order, without prior notice to the Customer, to supply less than the quantity the Customer has ordered of any item.

4.3 The Customer is responsible for insurance and risk in the Goods from delivery to the Customer or the time they are collected by the Customer or the Customer's agent.

4.4 Where the Supplier agrees to transport the goods to a specified place, the Supplier will deliver, or arrange delivery of, the goods to that place. Except where otherwise agreed, all freight charges shall be at the Customer's cost. The Supplier will make every effort to ensure delivery of Goods, is on time, but will not be liable to the Customer for any loss or damage arising in any way from any delay in delivery or performance. Delay in delivery or performance does not entitle the Customer to cancel any order. Where the Customer asks the Supplier to deliver goods directly to another person, that person takes possession of the goods for the Customer as the Customer's agent, the Customer is still directly responsible to the Supplier under these terms of trade.

4.5 Goods are ex works Auckland, New Zealand, unless prior alternative arrangements have been made with and approved by the Supplier.

4.6 If the manufacture, supply or delivery of the Goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Customer, the Supplier may, without prejudice to its other rights and remedies, require payment by the Customer of such portion of the purchase price as represents the extent to which the Supplier has performed the contract together with any expenses or additional costs incurred by the Supplier as a result of such delay. In the event of such delay continuing beyond a reasonable time, the Supplier may terminate the contract without prejudice to any other right or remedy.

4.7 Any claims for shortage or damage during delivery must be made to the carrier within 24 hours of the date of delivery. Where goods appear to be damaged or missing the Customer must contact the carrier and the Supplier immediately.

4.8 The Goods shall remain the property of the Supplier and title shall not pass to the Customer until such Goods have been paid for in full. If the Customer uses or sells the Goods to a third party before payment in full is made then the Customer acts as an agent in such case and shall receive and hold the proceeds of sale as fiduciary for the Supplier to the extent of the indebtedness. If the Goods are intermingled with other Goods in such a manner that they become an integral part of any other object then such object shall be deemed to become the property of the Supplier until the purchase price has been paid to the Supplier. Until payment of the purchase price in full to the Supplier, the Supplier shall be entitled to enter onto the Customer's premises or any other premises where the Goods are stored or thought to be stored to inspect and/or repossess the Goods. The Customer shall be responsible for any loss, damage or deterioration of the Goods due to any cause whatsoever from the date of delivery and in particular the Supplier will not be responsible for any loss or damage in transit where the Supplier has agreed to deliver the Goods to the Customer.

4.9 Due to IATA regulations some products will be unable to be supplied to countries outside of New Zealand without going through all of the proper channels.

5. Payment Terms

5.1 All orders placed with the Supplier are non-cancellable although reasonable cancellations will be accepted by the Supplier. An order is a contract (within the terms set out by the Supplier) between the Customer and the Supplier be it verbal or by other means. A contract and its obligations can be enforced by the courts. Order requirements such as the customer's need to raise an official purchase order or orders placed without the appropriate signature as required by the buyer are the customer's responsibility. Unless otherwise agreed at the time of the contract is entered into, payment of the purchase price shall be made on order of the goods.

5.2 For Cash Sales payments can be made via various means within New Zealand: credit card (MasterCard or Visa Card), pay pal and direct bank deposit. The Suppliers name, Simpower Ltd, will appear on all invoices, statements and purchase documentation, including, but not limited to bank statements, credit card statements etc.

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|---------------------|------------------------------|
| Bank Account Name: | Simpower Ltd |
| Bank: | BNZ |
| Bank Address: | 80 Queen Street, Auckland NZ |
| Sort Code: | 020290 |
| Account number: | 0158745-00 |
| International code: | BKNZ22 |

5.3 Credit Accounts

In some instances the Supplier will allow Credit Accounts to be established and the Supplier alone will set the payment terms for these and the Customer shall meet the set payment terms, whereby if a 7 day account then payment needs to reach the supplier with 7 days from date of invoice. Monthly account payments to reach supplier by 20th of month following invoice date and the Customer will not be entitled to withhold, reduce or defer any payment on account of any claim, counterclaim, set-off or otherwise. Any additional payments due by the Customer pursuant to any provision of the contract shall be added to the purchase price of the Goods and paid at the time provided for payment of the purchase price in these conditions of sale. If the Supplier deems at any time the credit standing of the Customer is unsatisfactory it may at its discretion require security for payment and may suspend performance of its obligations under the contract until the provision of such security. All costs and expenses of or incurred by Simpower as a result of such suspension and any recommencement shall be payable by the purchaser upon demand. The Customer agrees that failure to make payment by the due date renders them liable for paying an additional interest charge at the rate of 4% per month above the overdraft rate payable by the Supplier to their bankers compounding for the period of the late payment plus all costs of debt recovery incurred by the Supplier in the recovery of any monies owed, but without prejudice to any of the Suppliers rights and remedies in respect of such default arising from non-payment on the due date. The purchaser will also be liable for all costs and expenses incurred by Simpower as a result of the purchasers default.

5.3.1 Personal Property Securities Act 1999 ("PPSA")

5.3.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

- a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
- b) The Customer grants to the Supplier a security interest over the Customers present and after acquired property.
- c) The security interest relates to all Goods previously supplied by the Supplier to the Customer (if any) and all Goods that will be supplied in the future by the Supplier to the Customer.

5.3.3 The Customer undertakes to:

- a) Sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register.
- b) Indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- c) Not register a financing change statement or a change demand without the prior written consent of the Supplier; and
- d) Immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

5.3.3 The Supplier and the Customer agree that nothing in section 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

5.3.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

5.3.5 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

5.3.6 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 5.3.2 to 5.3.5.

Pursuant to the Privacy Act 1993, the Customer authorises the Supplier to collect on an ongoing basis any information as may be required to evaluate the Customer's credit worthiness. The Customer consents to the passage of information collected on to a third party who may make further enquires as to the credit worthiness of the Customer. Emails and addresses may be entered into a database and the Supplier may use this information in any media communication for future promotional, marketing and publicity purposes. The Customer agrees that the Supplier may cease supply of goods and or close the credit facility at any time without further notice.

6. Warranties & Liabilities

6.1 The Supplier offers the following Warranties:

Finished Goods - 12 Month factory backed warranty as long as the Finished Goods have not been tampered with. The Supplier accepts no responsibility due to incorrect selection and installation.

Cells - In any case where a defect due to unfitness for the purpose (as specified by the Supplier) unsafeness or unacceptable appearance, appears in single cells, the Supplier will replace these within a period of 7 days from the date of purchase. Cells are only guaranteed for 6 months if un-tampered with.

Packs - In any case where a defect due to faulty design or workmanship appears in the Goods within a period of 12 months from date of purchase and such Goods are returned to the Supplier within that period the Supplier will make good such defect at its option by replacement or repair. (However cells within a Pack are only guaranteed for 6 months if un-tampered with).

6.2 If a replacement is deemed to be appropriate, the warranty period is considered to have commenced at the date of the original sale and not the date of the replacement being sent.

6.3 The Supplier will not be liable for any defect in or damage to goods arising from the failure of the purchaser or any other person to use the goods for the purposes for which they are intended and/or as stipulated by the Supplier or arising from the negligence of the Customer or any other person. The Supplier will not refund the Goods simply because the Customer changes their mind or the application that it was intended for is found to be faulty and the Goods are working as intended.

6.4 The Supplier's liability for any defects in Goods of whatsoever nature and howsoever arising will (subject to clause 6.5) be limited to its obligations in the circumstances stipulated in clauses 6.1, 6.2, 6.3, 6.4 hereof and such liability will be in lieu of any other warranty express or implied, statutory or otherwise, and in particular and without limiting the generality of the foregoing. The Supplier will be under no liability for consequential losses arising out of or in connection with any defect in Goods.

6.5 Notwithstanding the provisions of clauses above hereof it is hereby agreed and declared by the Supplier that in any case where the foregoing provisions are contrary to the provisions of the NZ Consumer Guarantees Act 1993 and which, in terms of the said Act, cannot be modified by agreement between the parties, the foregoing provisions shall be modified in the manner and to the extent necessary to comply with such provisions of the said Act. Where the Customer is acquiring the product for the purpose of business then the Consumer Guarantees Act 1993 shall not apply.

7 Limitation of Liability

7.1 To the maximum extent permissible by law, the Supplier, its employees, contractors and agents, will not be liable to the Customer or any other person for loss or damage of any kind however that loss or damage is caused or arises. The Customer indemnifies the Supplier against all costs and losses from claims from third parties arising for any reason whatsoever as a result of the Customer's resupply, use or misuse of the Goods.

7.2 If the Supplier is unable to provide its obligation under the terms of this agreement by reason of strike, lock-out, riot, industrial action, fire, storm, operation of law or other cause beyond its control, then we are released from the obligation under this agreement.

8. Return Policy

8.1 All Goods to be returned must have Return Authorization Number issued by the Supplier. The issue of a Return Authorization Number does not guarantee that we will accept the return. Please contact us immediately to discuss the reason for the return prior to sending so that the return can be authorised.

8.2 Non Faulty Returns will also require a Return Authorization Number and must be returned within 7 days of delivery. The returned item must be in saleable, un-opened and resalable condition, and may be subject to a minimum 20% restocking fee. Freight charges will not be credited under any circumstances.

8.3 Products with missing accessories, damaged or open packaging cannot be returned.

8.4 Faulty Returns will require a Return Authorization Number within 7 days. Refund will be given if the Goods are deemed faulty, or a replacement may be offered. If the faulty return is outside that period, then the Customer will have to apply for warranty procedures. Freight charges will not be credited under any circumstances.

9. Repairs

Goods sent to and held by the Supplier for repair will be at the owners risk and if left for more than 8 weeks with no instructions may be disposed of.

10. Dimensions & Specifications contained or referred to in the contract or in any catalogues, websites, or other publications maintained or issued by the Supplier are estimates only. Unless otherwise expressly agreed in writing it is not a condition of the contract that the Goods will correspond precisely with such dimensions and specifications, and customary tolerances, or in the absence of customary tolerances, reasonable tolerances shall be allowed.

11. Copyright in all drawings, specifications and other technical information provided by the Supplier in connection with the contract shall remain vested in the Supplier.

12. Dimensions and specifications contained or referred to in the contract or in any catalogues or other trade media maintained or issued by the Supplier are estimates only. Unless otherwise expressly agreed in writing it is not a condition of the contract that the Goods will correspond precisely with such dimensions and specifications, and customary tolerances, or in the absence of customary tolerances, reasonable tolerances shall be allowed.

13. Errors or Omissions

The Supplier is entitled at any time to correct all errors and omissions (whether clerical, computational or otherwise) in any advertising, quotation, pricing, invoice or acknowledgement. The Supplier shall have the right to refuse or cancel any orders placed for product listed at the incorrect price. The Supplier will notify the Customer promptly of any error or omission discovered, and gives the customer the option of returning the goods for a full refund.

14. Assignment - the Customer will not be entitled to assign all or any of its rights or obligations under the contract.

15. Governing Law

The contract and its terms are governed by, and shall be construed in accordance with, the laws of New Zealand. Both parties submit to the exclusive jurisdiction of the courts of New Zealand.

16. Variation

The Supplier reserves the right to modify and vary these terms and conditions at any time.

17. Entire Agreement - the Customer acknowledges that in the absence of any written agreement between the parties these terms and conditions constitute the entire agreement between them and that there have been no representations made by either party to the other except such as are expressly set out herein. The Supplier reserves the right, in its sole discretion, to alter these terms and conditions at any time by notice to the Customer in writing.