

## 1. General principles

1.1 These General Terms & Conditions apply to Sales of products and services (henceforth the "Products" and/or "Services"), sold by a company of AEG Power Solutions Group (henceforth "AEG PS" or "Seller") and purchased by the Customer (henceforth the "Customer" or Buyer). These present General Terms & Conditions shall solely govern the legal relation between AEG PS and the Customer. The Customer's general terms and conditions shall apply only if expressly accepted by the Seller in writing.

1.2 Any Product order implies unreserved acceptance by the Customer of these conditions, which cancel and replace any provision to the contrary, except in the event of derogation resulting from an express prior agreement made in writing.

1.3. All information or data contained in general product documentation or price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the individual contract or purchase order.

## 2. Orders

2.1 Any purchase order will only become definitive subject and legally binding after its written acceptance by AEG PS. In certain cases, acceptance may however result from the dispatch of Products, which also shall be subject to the present General Terms & Conditions.

2.2 All modifications or deviations to the present General Terms & Conditions or any written confirmed by AEG PS contract or agreement shall be valid only, if provided by AEG PS in written form. However, no employee or representative of AEG PS has the authority, whatever their position, to give approval to any modification or addition to the present General Terms & Conditions or to any written confirmed by AEG PS other terms without a respective price adjustment.

2.3 AEG PS reserves the right to carry out, during performance of the order, any modification to Products deemed necessary, in particular in the event of a change in technical standards, the development of production methods or, more generally, legislative or regulatory provisions affecting the technical execution conditions of the purchase order.

## 3. Exclusions from the scope

3.1 Prices are ex works and excluding packaging. Value added tax shall be added at the then applicable rate.

3.2 Unless specifically mentioned with itemized pricing, inspection, offloading, erection or installation, training and other support services are not included in the prices and/or offers of AEG PS. Unless otherwise specified in AEG PS' offer, type tests or special tests are not included.

3.3 When supplied, battery cells/blocks and all necessary interconnecting links, terminal shrouds and covers etc, are delivered separately from the UPS equipment. Installation of such is not included in the prices and/or offers of AEG PS.

3.4 Where a battery is located remotely from its relevant UPS system, interconnecting cables are not provided as part of AEG PS scope of supply. When battery racks are supplied, they are delivered in kit form. Erection and installation are not included in the prices and/or offers of AEG PS.

3.5 Works testing does not include use of the contract batteries, nor batteries of a similar size/type. Battery and associated charger or UPS testing together is excluded from

AEG PS' offer.

## 4. Delivery Terms

4.1 AEG PS reserves the right to carry out full or partial deliveries, unless unreasonable to accept for the Customer.

4.2 AEG PS will make every effort to respect agreed delivery deadlines, it being nevertheless specified that these deadlines are given purely for indicative purposes.

4.3 Delivery is deemed to have been carried out at the location indicated in the notification of receipt of the order. Unless indicated to the contrary, Products are delivery "Ex Works". The Customer shall be informed by AEG PS of the date the Products become available. Customer shall not refuse to receive supplies due to minor defects.

4.4 The Customer must, ten (10) working days from the delivery of the Product, carry out himself or have carried out by any person with the appropriate technical skills, all technical tests and checks making it possible to observe any non-compliance of Products in comparison with the agreed characteristics, or any fault or error relating to the Products. Obvious defaults, which would have been detected in the standard course of product check by a prudent businessman after delivery and unpacking, shall not cause any liability of AEG PS except in case of intentional or gross negligent caused damages. In the absence of a detailed written and reasoned claim by the Customer within the aforementioned deadline, the Customer will be foreclosed and may no longer invoke the existence of the non-compliance or default he has observed.

## 5. Variations

5.1 If during the execution of the contract, AEG PS is directed by notice in writing to alter, amend or otherwise vary any part of the specifications, the drawings, or the Equipment, AEG PS shall inform the Customer in writing of the effect of the requested change in price, time of delivery and technical specification.

5.2 Variations shall become effective only upon written acceptance by AEG PS.

## 6. Passing of risks, Retention of title

6.1 The transfer of risks relating to Products takes place once the Products are made available at the AEG PS dispatch site, even if AEG PS is responsible for transport. All risk of loss or damage during transit shall pass to Customer upon the goods being made available to the carrier. If Customer does not have a transportation/carrier insurance, then Customer shall notify AEG PS and in written form and cost-based order to be covered under a transportation insurance of AEG PS.

6.2 The risk shall also pass to the Customer in the event of delayed dispatch due to the fault of the Customer or late collection. In that case, Products can be stored by AEG PS but will be handled at the exclusive risk and cost of the Customer.

6.3 The Product shall remain property of AEG PS until paid in full. Title shall pass only upon payment in full of the agreed purchase price. If Customer does not make timely payment(s), Customer will be responsible for all costs associated with perfecting Seller's security interest in the Products.

## 7. Preparatory Work

7.1 Customer shall provide in good time all installations, and ensure that the conditions necessary for the erection of the Product and for the correct operation of the Product are fulfilled. The preparatory work shall be carried out by the Customer in accordance with the drawings and information

provided by AEG PS in due term early enough to be ensured by the Customer.

7.2 For services, which are to be done on site of the Customer, the Customer shall ensure that a) the personnel of AEG PS can start work in accordance with the agreed time schedule during normal working hours; b) ensure that AEG PS is in due term before works on site informed in writing of all relevant safety regulations in force at the site. The work will not be carried out if the situation on site is in dangerous surroundings without mandatory safety and precautionary measures ensured and implemented by Customer. Customer has to bear all costs which occur because works cannot be executed due to missing safety measures. c) Customer shall ensure and support that AEG PS personnel obtain suitable and convenient board and lodging near by the site and have access to internationally acceptable hygiene facilities and medical services. d) Customer shall ensure to make available to AEG PS free of charge at the proper time onsite all necessary extraordinary tools, such as cranes, lifting equipment, means for transportation onsite, auxiliary tools, machinery, materials and supplies (such as fuel, electricity, gas, water, lighting, etc.), which are necessary to carry out the works, including also free-of-charge storage facilities, providing protection against theft and deterioration onsite. AEG PS will specify in writing the relevant requirements, if this is not a standard aspect in the relevant industry.

## 8. Assembly, Erection and Commissioning

8.1. In case assembly, installation, commissioning or other services onsite is part of the scope in the individual purchase order or contract, these shall be subject to the following provisions:

Customer shall provide at its own expense and in due time:

- a) all earth and construction work and other ancillary work outside the Seller's scope, including the necessary skilled and unskilled labor, construction materials and tools;
- b) the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants;
- c) energy and water at the point of use including connections, heating and lighting;
- d) suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances; furthermore, the Customer shall take all measures it would take for the protection of its own possessions to protect the possessions of the Seller and of the erection personnel at the site;
- e) protective clothing and protective devices needed due to particular conditions prevailing on the specific site.

8.2 Before the erection, commissioning or similar service work starts, the Customer shall unsolicited make available any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.

8.3 Prior to assembly, installation, commissioning or any other services onsite, the materials and equipment necessary for the work to start must be available on the site and any preparatory work must have advanced to such a degree that assembly, installation and/or commissioning can be started as agreed and carried out without interruption.

8.4 If assembly, installation or commissioning is delayed due to circumstances for which the Seller is not responsible, the Customer shall bear the reasonable costs incurred for idle times and any additional traveling expenditure of the Seller or his service personnel.

8.5 The Customer shall attest to AEG PS the hours worked by AEG PS's personnel at a weekly interval. Furthermore, Customer shall immediately confirm in written form if

assembly, erection or commissioning has been completed.

## 9. Acceptance and Acceptance Tests

9.1 If – after completion – the Seller demands acceptance of the supplies, Customer shall comply herewith within a period of two weeks. Acceptance shall be regarded as given by the Customer if and when the Customer lets expire a period of two weeks or the supplies/products are put to use after completion of agreed test phases, if any.

9.2 In case of formal Acceptance Tests requested in the contract or individual Purchase Order, such shall be carried out at the place of manufacture during normal working hours.

9.3 Acceptance tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.

9.4 If the tests are satisfactory, a final meeting attended by the parties shall take place and a Factory Acceptance Test Certificate (FAT Certificate) shall be issued and signed by both AEG PS and Customer's representatives, being understood that AEG PS shall immediately repair minor defects, if any.

9.5 AEG PS will notify the Customer in due term and sufficient time of the planned dates for the acceptance tests. If the Customer does not respond or is not present at the proposed time of the execution of the Acceptance test, then AEG PS is entitled to do the acceptance test without the Customer, and will send the acceptance test report to the Customer, who shall accept it as accurate or notify defaults within a period of 5 (five) working days after receipt of the acceptance test report.

9.6 If the acceptance test turns out that the Product is not complying with the contract or the purchase order, then AEG PS will without delay remedy any deficiencies in order to ensure that the Product complies with the contract or Purchase Order.

9.7 The Customer shall bear the costs of acceptance tests, except if it is a repeated acceptance test that had failed at first instance due to deficiencies. The Customer shall bear all traveling costs and living expenses for his representatives in connection with acceptance tests.

9.8 Battery testing is available at extra cost at battery manufacturer's premises. Global system test (battery and gear together) is not available at site even for an additional price.

## 10. Prices

10.1 Prices are ex works Incoterms 2010 and excluding packaging; value added tax shall be added at the then applicable rate.

10.2 AEG PS reserves the right to modify its prices lists and these General Terms & Conditions at any time.

10.3 Any transport, customs, handling and insurance operation involving Products outside the delivery obligations as specified in the contract, order confirmation or notification of receipt of the order is at the cost and risk of the Customer.

10.4 If AEG PS is also responsible for assembly, installation, commissioning or any other kind of technical service, unless otherwise agreed, the Customer shall pay the agreed remuneration and any incidental costs related, e.g. for traveling and transportation as well as allowances.

10.5 All taxes, costs or other charges to be paid in application of the relevant legislation relating to the sale of Products are borne by the Customer.

10.6. Unless otherwise stipulated in the AEG PS offers, quotes or proposals, all prices are firm for the duration given in the offer, quote or proposal, or, in case such documents do not contain a duration, then for a maximum period of one month. Those prices do not include value added or other taxes or assessments on the Goods or on any Services performed in connection therewith which are now or hereafter imposed or levied by any governmental entity. Customer agrees to pay or to reimburse AEG PS for any such taxes.

#### **11. Invoices & Payment conditions**

11.1 If not otherwise agreed in writing, payment shall be due latest 30 days after invoice date.

11.2 Payment in EURO shall be made as follows: Wire transfers payable to "AEG POWER SOLUTIONS" are to be sent to the account defined by AEG PS Affiliate.

11.3 Payment is deemed to have been made on the date on which the funds are made available to AEG PS, the Customer bearing any costs deriving from the means of payment chosen.

11.4 Any total or partial payment carried out after the agreed or relevant payment date AEG PS may at its own discretion:

- the application of legal late penalties (delay interests) at a rate equivalent to 5 percentage points above the base interest rate of the European Central Bank of the purchase price portion which is in delay;
- and/or after notification, default and, consequently, the immediate enforceability of all pending sums to AEG PS, even those not due;
- and/or the right for AEG PS to suspend the execution of pending sales, performance, services, or similar delivery obligations and/or to demand cash payment on or before start of delivery for future sales until the situation is completely rectified.

11.5 Even in the event of dispute, all payments must be paid when due. All deductions and/or compensation for whatever cause may only be made by the Customer after the prior written agreement of AEG PS. Any invoice which is not contested within thirty (30) days of receipt will be deemed accepted.

11.6 In the event that the Customer is liable for several payments to AEGPS, it is agreed that the payments will be deducted from the oldest debts.

11.7 In case of late payment, AEG PS may, after having notified the Customer in writing, suspend performance of the contract until AEG PS receives the overdue or outstanding payment.

11.8 In the event of change to the legal or financial status of an existing Customer, or for the first orders of a new Customer, AEG PS reserves the right to claim a cash payment or cash on delivery and/or demand guarantees.

11.9 The Customer may only set off those claims which are undisputed or non-appealable.

#### **12. Patents, Intellectual Property & Reservation of ownership clause**

12.1 Unless otherwise agreed, AEG PS provides the Products to the Customer free from third parties industrial property rights ("IPR") with respect to the country of the place of delivery only.

12.2 Claims of the Customer against AEG PS hereunder shall be excluded if it is responsible for the infringement of an IPR or if the infringement is caused by specifications made by the Customer, by a type of use which was not foreseeable by AEG PS or by modifications performed by the Customer as well as in relation with products which were not provided by AEG PS.

12.3 AEG PS herewith reserves all industrial property rights and/or copyrights and intellectual property rights at drawings and other technical documents or technical information. Those shall not be made accessible to third parties without AEG PS' prior written consent and shall, upon request by AEG PS, be returned without undue delay.

12.4 Customer has the non-exclusive right to use IP of the Product, standard software and firmware for the purpose of the respective contract only, provided that it remains unchanged, is used within the agreed performance parameters and on the agreed equipment. Beyond the purpose of the individual purchase order or contract, drawings, technical documents or other technical information may not without the written consent of AEG PS be used or transmitted and communicated to third parties.

#### **13. Warranties and Limitations on Warranties**

13.1 The Seller expressly warrants that the Goods manufactured by it will

- (i) conform to the descriptions and specifications incorporated herein and (ii) be free of defects in material or workmanship for a period of 12 months from date of operation, or 18 months after date of shipment, whichever occurs first. Warranty does not cover normal wear and tear or deterioration.

13.2 During warranty period, defective parts or services shall be – at AEG PS sole discretion – be repaired, replaced or provided free of charge. Place of performance of the warranty obligations is according to the delivery conditions at the place of delivery under the respective order. For detection and investigation of defects, AEG PS can decide at its own discretion to follow FMEA-method and provide the Customer upon written request with an FMEA-report. The Customer has to support upon request by AEG PS the analysis under FMEA.

13.3 If during warranty services it turns out that the repaired default was not subject to warranty because it had been caused in example – but not limited to – by wrongful handling of the Product by the Customer, faulty maintenance, incorrect erection or faulty repair by the Customer or an unauthorized third party, by an event of Force Majeure or by any a third party, by use of the Product beyond specification or non-compliance of environmental or framework conditions, then Customer is obliged to pay for the respective repair or replacement service the standard service fees of AEG PS, and for the consummated spare parts the respective applicable standard spare parts price.

13.4 Customer shall without undue delay notify AEG PS in writing of any defect which appears. AEG PS is not liable for any damage which occurs because of delayed notification by the Customer. Furthermore, if Customer fails to notify AEG PS in writing of a defect within a due reasonable time frame, he loses his right to have the defect remedied. When a defect is of the nature that it may cause damage immediately, the Customer shall inform AEG PS immediately in writing. AEG PS will not be responsible for damages which occur due to non-immediate notice by the Customer.

13.5 If the Customer has given notice to AEG PS about a defect and no defect then is found at the Products or no defect, that AEG PS is liable for then AEG PS is entitled to compensation for the costs incurred as a result of the wrongful default notice by the Customer.

13.6 Customer is obliged to dismantle and reassemble at its own costs defective equipment other than the Product, to the extent that this is necessary to remedy the defect.

13.7 Unless otherwise agreed, the Customer shall bear all such costs, which AEG PS incurs for repair, dismantling, installation

and transport as a result of the Product, being located in a place other than the agreed place of delivery (the individual Incoterms 2010 in the purchase order or contract).

13.8 Defective parts, which have been replaced, return into the property of AEG PS.

13.9 AEG PS shall not be liable for any loss the defect may cause, including loss of production, loss of profit and other indirect loss. This limitation of liability shall not apply in cases of gross negligence or intentional default.

#### 14. Storage

In the event that the Customer does not take delivery for any reason at the time equipment is available for shipment, AEG PS shall arrange the storage at the Customer's own risks and expenses. In such case, a certificate of storage, either within AEG PS' premises or that of an agreed third party, shall be issued in place of the shipping document.

#### 15. Termination / Contract cancellation /Suspension

15.1 The Customer shall not terminate any purchase order, in whole or in part, for convenience. Only, if expressly excepted by AEG PS, a Customer may terminate for convenience, though only upon written notice to AEG PS. In case of such termination, AEG PS shall be entitled to termination charges in whole or in part as follows (percentage due of purchase price):

|                                  |      |
|----------------------------------|------|
| Prior to Release for Engineering | 20%  |
| After Release for Engineering    | 40%  |
| After Release for Manufacturing  | 100% |

Shipments may be suspended for up to four weeks, provided the Customer provides written notice to AEG PS no later than sixty (60) days prior to the shipment date.

15.2. In the event the Customer is unable to take delivery of the goods as scheduled, and so notifies AEG PS less than sixty (60) days from the scheduled date of shipment or delivery, AEG PS will arrange in-transit storage at the Customer's expense; however, passage of risk and title will occur when the goods are made available to the freight carrier (INCOTERMS 2010 Ex Works). However, upon expiration of a suspension period of 60 days, AEG PS is entitled to invoice all incurred services and products according to the same rules as apply for termination and stipulated above in clause 15.1.

#### 16. Limitation of Liability

16.1 In the event of damage resulting from a fault on the part of AEG PS vis-à-vis the Customer, only direct damages may be compensated, to the exclusion of any intangible or indirect damages such as operating or profit losses or commercial damage.

16.2 Consequential Damages - In no event shall the Seller be liable for any special direct or indirect, or incidental or consequential damages, losses or expenses arising out of the transaction. Such excluded damages would be the loss of profits or loss of revenue, diminution of value, loss of opportunity, loss of goodwill, the cost of purchase or the cost of replacement power or temporary equipment, or the loss of use of the equipment or power system, the loss of property, interest or any other financial loss, or any other indirect damages, whether or not the released party is aware of or has been advised of the possibility of such damages.

16.3 In any event, except in the case of intentional or gross negligent caused damages, the total and aggregate liability of AEG PS hereunder will be limited at a maximum to the value of the purchase price of the Product.

#### 17. Insurance

If requested by Customer, AEG PS shall provide evidence of product liability insurance coverage.

#### 18. Force majeure

18.1 AEG PS reserves the right to suspend or cancel the sale, totally or partially, in the event of force majeure, expressly defined pursuant to this agreement as any unavoidable event likely to delay or cease the production or delivery of Products, or to hinder the normal execution of the contract.

18.2 AEG PS will not incur any liability in the event of non-execution on its part deriving from a case of force majeure. force majeure means, that AEG PS shall not be liable for failure to perform or for delay in performance due to any contingency beyond its reasonable control, including without limitation, fire, flood, strike or other labor difficulty, act of God, act of governmental authority, riot, embargo, fuel or energy shortage, wrecks or delay in transportation, or inability to obtain suitable or sufficient labor, materials or manufacturing facilities from usual sources. In the event of delay of performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

#### 19. General Agreement, Applicable law – Jurisdiction

19.1 THE LAWS WHICH ARE APPLICABLE AT THE SEAT OF THE SELLING AEG AFFILIATE SHALL APPLY. NEVERTHELESS, IT IS EXPRESSLY AGREED THAT THE PROVISIONS OF THE AGREEMENT ON THE INTERNATIONAL SALE OF GOODS, OF 11 APRIL 1980, WILL NOT BE APPLICABLE. PLACE OF JURISDICTION SHALL BE AT THE LOCATIONS OF THE SELLING AEG AFFILIATE.

19.2 AEG PS ensures that the works carried out and the Products delivered, comply with the laws and regulations and rules, applicable at the place of manufacturing. Beyond this, AEG PS ensures to comply with general international standards like IEC for its products. Any specific regulation, laws and rules at the place of operation of AEG PS' Products, have to be notified by Customer to AEG PS. Both, Customer and AEG PS need to agree on application of such local individual laws, regulations and rules individually in Writing.

#### 20. Miscellaneous

The legal invalidity or unenforceability of one or more provisions of this General Terms & Conditions in no way affects the validity of the remaining provisions. This shall not apply if it would be unreasonable onerous for one of the parties to be obligated to continue the contract.