

# UPS Power Solutions Limited

## Terms and Conditions of Sale

### 1. Application of terms and conditions of sale

1.1 These terms and conditions of sale ("conditions") apply to all supplies of goods and/or services from time to time by UPS Power Solutions Limited ("the company") and the purchaser or recipient of goods and/or services ("the customer"). No variation to these conditions is binding unless agreed in writing by the company.

### 2. Payment Terms, Credit and Interest

2.1 Unless credit terms have been approved, all goods are supplied on Cash on Delivery basis. If credit terms have been approved then the following terms shall apply:

- A) payment is due in full on the 20<sup>th</sup> of the month following invoice without deduction or set-off.
- B) Should the customer default in payment of any monies due to the company then:
  - i) All monies due to the company shall immediately become due and payable and shall be paid on demand by the company and
  - ii) the company shall be entitled to charge interest at the rate of 1.5% per month from the due date until actual date of payment; and
  - iii) Any expenses and other costs incurred by the company in recovering any outstanding monies including without limitation debt collection fees and/or legal fees on a solicitor/client basis, shall be recoverable from the customer.

2.2 The company is entitled at any stage to decline or revoke any credit arrangement and/or to require such security or additional security as the company in its absolute discretion thinks fit and/or to withhold the supply of goods or suspend any credit arrangements at any time until such security or additional security is provided.

### 3. Risk and Title

3.1 All goods supplied by the company shall remain the property of the company until payment in full is received by the company for all such goods and any other goods supplied to the customer. Until all amounts owing in respect of the goods have been paid, the customer shall hold the goods in a fiduciary capacity as a bailee and store them separately and the customer shall be liable to the company accordingly.

3.2 Notwithstanding clause 3.1, the customer may sell the goods in the ordinary course of its business on the following terms:

- A. The customer shall hold the proceeds of sale in trust and is under a fiduciary duty to immediately account to the company for such proceeds; and
- B. The authority to sell goods is automatically revoked on the earlier of the customer breaching any of its obligations under these conditions, or the company notifying the customer in writing that the authority is revoked.

3.2.3 In the event of the customer breaching any of these conditions the company shall have the right (without giving notice) to retake possession of any goods supplied to the customer and the customer hereby authorises and allows the company or its representatives, agents or, employees to enter the premises on which any such goods are situated for the purpose of retaking possession and the company shall not be liable for any costs incurred by, or damage caused to the customer, or any other property of the customer by reason of, or in the course of such entry and repossession.

3.4 Notwithstanding that ownership of all goods supplied remains with the company until the goods are fully paid for, all risk in the goods passes to the customer on delivery.

### 4. Personal Property Securities Act 1999 ("PPSA")

4.1 The customer acknowledges that clause 3 creates a security interest (as that term is defined in the PPSA in the goods. The customer will at the company's request promptly execute any documents, provide all necessary information and do anything else required by the company to ensure that the security interest constitutes a perfected security interest (as that term is defined in the PPSA) if required by the company, including executing any variations to this agreement reasonably requested by the company.

4.2 The customer waives its rights under the PPSA to receive a copy of any verification statement otherwise required by the PPSA. So far as permitted by section 107 of the PPSA, the customer will have no rights under sections 114, 120 and 133 of the PPSA, including the right to receive any notices. The customer agrees that the company may exercise its rights under sections 109 and 120 concurrently, and that repossession and retention of goods under sections 120-123 will immediately extinguish any rights and/or interests the customer may have in the goods and that the company may allocate any monies it receives to debts, charges and expenses in any priority it determines.

4.3 The customer agrees that the customer's account may be debited with the costs of registration of a financing statement and all other costs associated with the perfection and enforcement of the security interest (including full client/solicitor costs).

### 5. Delivery

5.1 Time for delivery if stated is according to our best expectations but is not guaranteed nor shall it be a representation or condition of any contract. The customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery other than to delay payment until delivery has occurred, except where the goods are stored on behalf of the customer pursuant to clause 6. The company reserves the right to charge the cost of delivery to the customer. The company shall not be liable for any loss, expense, injury, damage or claim however arising or resulting from any delay however caused.

### 6. Storage of goods on customer's behalf

6.1 If the customer requests the company to delay delivery of any goods, the company may at its option (but is under no obligation to) store those goods for the customer. The company may charge the customer a storage fee for storage of the goods. In such cases, the customer must ensure that their insurance covers the stored goods, and the company is under no obligation to insure such goods. Delivery shall be deemed to occur when the company confirms such storage arrangements.

### 7. Defective goods

7.1 If any goods or part thereof are damaged or defective the customer must advise the company within 7 working days of delivery. A failure to do so may invalidate any warranty.

### 8. Warranties and Liability

8.1 To the extent permitted by law, unless expressly agreed otherwise in writing the company does not provide any warranties for goods sold by the company as the manufacturers warranties will apply. The customer acknowledges that the manufacturers warranties may require the customer to return any defective goods to the manufacturers service center at the cost of the customer. The company strongly recommends that the customer retain the manufacturers warranty card on delivery of the goods.

### 9. Consumer Guarantees Act

9.1 The customer acknowledges that where they acquire goods for business purposes, or hold themselves out as acquiring goods for business purposes then the provisions of the Consumers Guarantees Act 1993 shall not apply.

### 10. Indemnity for costs

10.1 The customer shall indemnify the company against all costs or damages incurred in recovering goods or other monies due by the customer and the enforcement or attempted enforcement of the company's rights (including full solicitor/client costs) and such amounts shall be monies due for the purposes of these conditions.

### 11. Cancellation by the company

11.1 The company shall, without liability on their part, and without prejudice to any other right the company has in law or in equity, have the right by notice in writing to the customer to suspend or cancel in whole or in part any contract for the supply of goods, in so far as it remains unperformed, at the time of or after any of the following events if the customer:

- A) defaults in the payment of any monies due under the contract; or
- B) is subject to a resolution being passed or an order made by any Court for the winding up of the customer, except for the purposes of reconstruction or amalgamation; or
- C) becomes insolvent, bankrupt, commits an act of bankruptcy or is placed in liquidation; or
- D) makes or enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of the customer's creditors.

### 12. Effect of cancellation by the company

12.1 Any cancellation or suspension of a contract for the supply of goods by the company pursuant to the preceding clause shall not affect the company's claim for monies due at the time of cancellation or suspension or for damages for any prior breach of any express or implied term of that contract.

### 13. Privacy

13.1 The customer hereby agrees and authorises the company to obtain information about the customer from the customer or any third party and to divulge any such information to any third party in the course of the company's business activities including but not limited to, any credit or debt collection agency for the purposes of credit assessment or debt collection and direct marketing activities. The information collected shall be retained by the company while the customer holds an account or continues to purchase goods from the company. The customer shall be provided with access to the information held by the company for review or corrective purposes.

### 14. General

14.1 These conditions, together with the purchase price contained in any invoice issued by the company to the customer, constitute the entire agreement between the company and the customer. It is expressly agreed that there are no other understandings, representations or warranties of any kind (express or implied) forming part of this contract.

14.2 Any claim or dispute arising hereunder shall be subject to arbitration in accordance with the Arbitration Act 1996.

14.3 If for any reason one or more provisions of these conditions is unenforceable, it shall be severed and all other provisions shall remain binding.

14.4 The delay or failure of the company to exercise any right or remedy under these conditions is not a waiver of that right or remedy. The single or partial exercise of a right or remedy does not prevent the exercise of any other right or remedy or its further exercise.