

SWITCH2 ENERGY LIMITED (Hereafter referred to as the "Company")

STANDARD CONDITIONS OF SALE

The following standard terms and conditions apply to every agreement entered into by the Company for the supply of Equipment and the provision of Services.

1. DEFINITIONS

In these Conditions:

1.1 the following words and expressions have the following meanings:

"Clause"	a clause of these Conditions;
"Conditions"	the terms and conditions for the supply of Equipment and the provision of the Services, as set out in this document, together with any special terms and conditions agreed in writing by the Customer as set out in the Contract;
"Commissioning Data Form"	a form issued to the Customer by the Company detailing the commissioning requirements;
"Confirmation of Requirements"	a form issued to the Customer by the Company detailing the performance criteria of the HIU;
"Contract"	the contract for the supply of the Equipment and the provision of the Services entered into between the Customer and the Company on the Conditions;
"Customer"	the entity specified in the Quotation, or the entity whose Order is accepted by the Company;
"Delivery Schedule"	a schedule issued by the Customer to the Company indicating the requested delivery dates for the Equipment (this schedule will not form part of the Contract);
"Equipment"	the prepayment units, hydraulic and electrical control boards (HIUs), meters and/or other metering equipment specified in the Quotation or the Order (as applicable);
"Operating Instructions"	has the meaning set out in Clause 10.2.5 ;
"Order"	the written order placed by the Customer on the Company for the provision of the Equipment and Services;
"Price"	the price for the supply of the Equipment and the performance of the Services, as set out in the Quotation or the Order (as appropriate);
"Quotation"	the written quotation, proposal or tender submitted by the Company to the Customer;
"Readiness for Commissioning Form"	a sheet issued to the Customer by the Company requesting details in relation to the commissioning;
"Relevant Requirements"	means all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the <i>Bribery Act 2010</i> ;
"Services"	the commissioning (and the installation if agreed by the Company) of the Equipment as described in the Quotation or the Order (as applicable);
"Site"	the site specified in the Quotation or Order (as applicable) to where the Equipment is to be delivered and at which the Services are to be performed;

1.2 the singular includes the plural and vice versa, and words importing any gender include all genders;

1.3 headings are for ease of reference only.

2. QUOTATIONS

2.1 All Quotations are made, and all Orders are accepted, subject to the Conditions. The Conditions set out in this document supersede any earlier sets of conditions of trading of the Company and represents the entire understanding between the Company and Customer in relation to this Contract.

2.2 The Quotation is an estimate only and all descriptive matters, specifications, performance ratings, capacities, prices, drawings and other data submitted by the Company (whether in the Quotation or in any catalogues, advertisements or price lists) are deemed to be approximate only (except where expressly stated in writing to be exact) and are intended merely to present a general idea of the Equipment and/or Services available from the Company.

2.3 Quotations shall be available for acceptance for a maximum period of 30 days from the date when given, and may be withdrawn by the Company within such time period at any time by written or oral notice.

2.4 If any statement or representation has been made to the Customer by the Company or its servants or agents upon which the Customer relies other than in the documents enclosed with the Quotation or Order Confirmation, then the Customer must set out that statement or representation in a document to be attached to or endorsed on the Order and in any such case the Company may confirm, reject or clarify the point and submit a new Quotation.

3. ORDER AND CONTRACT

3.1 The Customer shall be responsible for ensuring the accuracy of the contents of the Order and shall:

3.1.1 promptly complete, sign and return to the Company the Confirmation of Requirements; and

3.1.2 give the Company any information requested by the Company to enable the Company to proceed with the Contract. Any failure to do so will allow the Company to charge the Customer an additional Price for any delay or entitle to Company to terminate the Contract immediately.

3.2 All Orders are subject to the Company's written acceptance and the Company shall issue an Order confirmation ("Order Confirmation"). The Order Confirmation shall include, but not limited to, the quantity, particular specifications of the Equipment requested by Customer, pricing and terms of delivery. Such Order Confirmation shall be given within reasonable time upon receipt of the Confirmation of Requirements or Order, whichever is the later. For the avoidance of doubt, no Contract shall have been formed until the Order Confirmation has been issued by the Company to the Customer.

3.3 On receipt of the Order Confirmation the Customer shall:

3.3.1 promptly complete, sign and return to the Company the Commissioning Data Form; and

3.3.2 provide a Delivery Schedule.

3.4 Only these Conditions apply to the Contract, and shall override any other terms, conditions or warranties which the Customer may seek to impose. Acceptance of the Equipment and of the performance of the Services by or on behalf of the Customer shall be conclusive evidence that these Conditions are accepted by the Customer and apply to the Contract.

3.5 No variation of the Contract shall apply unless agreed in writing by an authorised representative of the Company.

3.6 The Company reserves the right to make any changes in the specification of the Equipment, which does not materially affect the quality or performance, without notifying or agreement of the Customer.

4.1 No Contract may be cancelled by the Customer except with the written agreement of the Company and on the terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

4.2 Any plans, drawings or technical documents prepared by the Company and submitted to the Customer prior or subsequent to the formation of the Contract shall remain the property of the Company and shall be returned to the Company on demand. The Customer shall not without the Company's written consent copy the said plans, drawings or technical documents or any part of them or part with possession of them or disclose them or any part of them to others or allow others to use them or copy them, nor will the Customer use or allow any third party to use the said plans, drawings or technical documents other than in connection with the installation or assembly of the Equipment.

5. PRICE

5.1 The Price for the supply of the Equipment and the performance of the Services shall be as set out in the Order Confirmation.

5.2 All Prices are exclusive of value added tax and similar taxes, levies or duties, which the Customer shall be additionally liable to pay to the Company.

5.3 The Company reserves the right, by giving notice to the Customer, at any time before delivery, to increase the Price to reflect any increase in the cost to the Company in executing the Contract due to any factor beyond the control of the Company (such as, without limitation, any increase in the cost of labour, raw materials, overheads, or currency), any change in delivery dates, quantities, or specifications for the Equipment arising as a result of any error or omission or changes deemed necessary by the Customer, or any delay or interruption in the Contract not attributable to the Company.

5.4 The Price excludes packaging, insurance, delivery and transport charges, installation and commissioning which the Customer shall be liable to pay in addition to the Price, unless it is expressly stated in the Order Confirmation that these costs have been included by the Company. These will be notified to the Customer in the Order Confirmation or by separate communication from the Company.

6. TERMS OF PAYMENT

6.1 Unless otherwise agreed in writing, the Company shall be entitled to invoice the Customer for the Price on or at any time after delivery of the Equipment. Where the delivery of the Equipment has been delayed at the request or through the actions of the Customer, the Company may submit its invoice at any time after the original delivery date(s) specified in the Delivery Schedule.

- 6.2 The Company reserves the right at its option to require payment in part or in full of the Price prior to despatch of the Equipment, and reserves the right to withhold delivery of the Equipment or performance of the Services until such payment is received.
- 6.3 Unless otherwise agreed by the Company in the Order Confirmation, the terms of payment shall be 30 days from the date of invoice notwithstanding that delivery may not have taken place and the property in the Equipment has not passed to the Customer.
- 6.4 The time of payment of the Price shall be of the essence of the Contract.
- 6.5 Where Equipment is delivered by instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these Conditions.
- 6.6 No right of set-off or cross set-off shall exist in respect of any claims by the Customer against the Company unless and until such claims are accepted in full by the Company in writing and the Customer shall not withhold all or any part of any sum which has become due for payment under the Contract.
- 6.7 If the Customer fails to make any payment due to the Company (whether under the Contract or otherwise) on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
 - 6.7.1 cancel the Contract so far as any Equipment remains to be delivered or Services performed under it, or suspend any further delivery of the Equipment or performance of any Service; and
 - 6.7.2 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the prevailing County Court Judgement Rate per annum until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

7. DELIVERY AND INSTALLATION

- 7.1 The Equipment will be delivered to, and the Services performed at, the address specified in the Order Confirmation.
- 7.2 The Company shall make every reasonable effort to deliver the Equipment and perform the Services within the times specified in the Delivery Schedule, however the Company cannot guarantee that those times will be achieved. For the avoidance of doubt the Delivery Schedule does not form part of the Contract and the Customer shall not be entitled to rely upon it and failure by the Company to comply with the Delivery Schedule or to meet any stipulated delivery time(s), shall not invalidate the Contract or entitle the Customer to damages or withhold payment or the right to terminate or cancel the Contract.
- 7.3 The Customer is required to acknowledge receipt of all Equipment by signing the delivery note supplied by the Company or its agents. The delivery note should then be returned to the Company.
- 7.4 If the Customer fails or refuses to take delivery of the Equipment on the due date, or fails to give the Company adequate instructions for delivery at the time stated, then he shall be liable to the Company or any loss or costs arising from such failure or refusal and for a reasonable charge by the Company for the care, custody, storage and insurance of the Equipment until actual delivery. This provision shall be in addition to and not in substitution of any other payment or damages for which the Customer may become liable in respect of his failure to take delivery at the appropriate time. Where the delivery of the Equipment has been delayed at the request of the Customer, the Company may charge the Customer for the any costs it incurs for the care, custody, storage and insurance of the Equipment until actual delivery and the Customer shall be liable to the Company for any such costs.
- 7.5 It is the responsibility of the Customer to inspect the Equipment on delivery. Any claim by the Customer which is based on the quality or condition of the Equipment or their failure to correspond with the Order Confirmation shall (whether or not delivery is refused by the Customer) be notified to the Company within 3 days from the delivery date or (where the defect was not apparent on reasonable inspection) within a reasonable time after discovery of the failure to correspond with the Order Confirmation. If delivery is not refused, and the Company is not so notified within the time limit, the Customer shall not be entitled to reject the Equipment and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Equipment had been delivered in accordance with the Contract.
- 7.6 Unless otherwise agreed in the Order Confirmation, the Customer shall be responsible for installing the Equipment in accordance with the manufacturer's installation instructions and technical documentation provided by the Company.
- 7.7 Once the Equipment has been installed the Customer shall promptly complete, sign and return the Readiness for Commissioning Form to the Company. In the event that the Customer postpones or rearranges the agreed commissioning date(s) as set out in the Commissioning Form the Company shall be entitled to charge the Customer the following:
 - 7.7.1 5 business days' notice to postpones or rearrange the commissioning date(s): 10% of quoted daily commissioning fee,
 - 7.7.2 4 business days' notice to postpones or rearrange the commissioning date(s): 20% of quoted daily commissioning fee,
 - 7.7.3 3 business days' notice to postpones or rearrange the commissioning date(s): 30% of quoted daily commissioning fee,
 - 7.7.4 2 business days' notice to postpones or rearrange the commissioning date(s): 50% of quoted daily commissioning fee,
 - 7.7.5 1 business days' notice or less to postpones or rearrange the commissioning date(s): 100% of quoted daily commissioning fee.

8. RISK AND TITLE

- 8.1 The risk of damage to or loss of the Equipment shall pass to the Customer when delivered to the Site.
- 8.2 Title to the Equipment (or any part of it) shall not pass to the Customer until the Customer has paid the Price in full.
- 8.3 If the Customer shall be in breach of any of the terms of the Contract then all monies owed by the Customer to the Company, whether under the Contract or otherwise, shall become immediately due and payable and the Customer grants to the Company and its employees or agents an irrevocable licence to enter upon the Site to recover and/or resell such Equipment (irrespective of whether any part of the Equipment has become a fixture) as the Company may deem necessary to recover all sums owing to it by the Customer together with any reasonable costs of the Company so incurred. Furthermore, if the Customer is not the legal owner of the Site, the Customer shall ensure that the Company's employees or agents are granted access to the Site by its owner to affect such recovery. This right shall continue to subsist notwithstanding the termination of the Contract through the happening of any of the events specified in these Conditions or otherwise and without prejudice to any accrued rights of the Company under the Contract.
- 8.4 Until all monies owing to the Company (whether under this Contract or otherwise) have been paid in full the Equipment shall remain the absolute property of the Company and the Customer shall only be entitled to possession of the Equipment on these Conditions, and shall hold the Equipment in a fiduciary capacity as bailee; and any times affixed to land and buildings may be detached and removed by the Company and shall not and are not intended to become part of such property.
- 8.5 The Customer shall keep the Equipment in good condition and shall maintain full insurance in respect thereof on the Company's behalf in an amount which is not less than the price payable to the Company for the Equipment, and all proceeds of such insurance shall be held on trust for the Company.
- 8.6 Notwithstanding the provisions of this **Clause 8**, the Company may bring an action for the Price due under the Contract at any time after the Price has become payable under these Conditions.
- 9. GUARANTEES**
- 9.1 Any components or parts not of the Company's own making incorporated in the Equipment or sold by the Company are not guaranteed by the Company, but carry the manufacturers' guarantee only.
- 10. WARRANTY**
- 10.1 The Company warrants that the Equipment will be of satisfactory quality for the period of 15 months following delivery, or 12 months from commissioning of the Equipment, whichever is sooner (the "Warranty Period").
- 10.2 In the event that the Equipment, or the workmanship used in providing the Services, is proved to be defective, or in need of repair during the Warranty Period, then the Company undertakes at its sole discretion for the duration of the Warranty Period to replace, repair or rectify the Equipment free of charge and subject to any intervening wear and tear to the condition originally specified by the Customer provided that:
- 10.2.1 the Customer notifies the Company in writing of its claim within 14 days of discovering the alleged defect giving full details of the alleged defect;
- 10.2.2 the Company shall be entitled and shall be offered the facilities to inspect and test the Equipment;
- 10.2.3 (upon examination) the Equipment proves to be defective due to defective workmanship of the Company;
- 10.2.4 an entity, other than the Company, has not dismantled, repaired or so attempted or otherwise tampered with the Equipment or any part of the Equipment;
- 10.2.5 the Equipment has been used, maintained, stored and serviced (where appropriate) in accordance with their operating instructions and in a proper manner (the "Operating Instructions");
- 10.2.6 the Equipment has not been used whilst allegedly defective, in need of repair or otherwise not in accordance with the Order or the Operating Instructions of the Company; and
- 10.2.7 the total Price of the Equipment has been paid by the due date for payment.
- 10.3 If such notice is not received and such proof not forthcoming within the Warranty Period then the Equipment shall be deemed to be free from any defect.
- 10.4 The Equipment is sold explicitly on the condition that it will be used only in accordance with the Operating Instructions and the technical specification (as set out in the Order Confirmation or as notified to the Customer by the Company) and for the purpose for which it was designed. The Customer shall procure that the Equipment is installed in accordance with **Clause 7.6**, operated in accordance with the Operating Instructions and used for the purpose for which the Equipment was designed. The Company shall not be liable for any damage, loss or injury resulting from any misuse of the Equipment which is not operated in accordance with its Operating Instructions or used for the purpose for which the Equipment was not designed.
- 10.5 The Company's liability does not cover defects arising from the negligence of any party other than the Company's representatives, wilful damage, or from maintenance or alterations carried out without the Company's written consent or from repairs carried out improperly by any party other than the Company's representatives, nor does it cover normal deterioration.
- 10.6 The Company promises to exercise reasonable skill and care in the assembly or delivery of the Equipment or the performance of the Services (as applicable), but if any breach of this promise by the Company causes death or personal injury, then the Company shall accept liability.

11. LIMITATION OF LIABILITY

- 11.1 The Customer agrees with the Company that if the Customer shall suffer loss or damage as a result of any breach of any of the terms of the Contract by the Company or its servants or agents, or as a result of the negligence of the Company or its servants or agents, then the liability of the Company in respect of such loss or damage shall be limited to the following:
- 11.1.1 in the case of insured losses for which the Company maintains insurance shall be limited to the sums as specified in the appropriate insurance policies held by the Company;
- 11.1.2 in all other cases (including un-insured losses) be limited to an amount per claim or series of claims arising out of one cause and per year equal to the Price paid by the Customer.
- 11.2 The limitation on the amount of the liability of the Company as referred to in **Clause 11.1** shall subsist indefinitely notwithstanding the termination of the Contract.
- 11.3 The limitation of liability contained in **Clause 11.1** shall extend and apply not only to the Company but also to its servants and duly authorised agents.
- 11.4 The Company's liability under **Clause 11.1** shall be to the exclusion of all other liability to the Customer, whether contractual, tortious or otherwise, and all conditions or warranties whatsoever concerning the Equipment and/or the Services (whether express or implied) are excluded to the fullest extent permitted by law. Without prejudice to the generality of the foregoing, in no circumstances shall the Company be liable for any loss of profit, business, contracts, revenues or anticipated savings, or for any special, indirect or consequential loss or damage of any nature whatsoever.
- 11.5 The Customer agrees with and accepts that with regard to the limitations of liability set out in **Clauses 11.1 to 11.4** (inclusive), that such limitations are perfectly fair and reasonably having regard (amongst other things) to the following circumstances:
- 11.5.1 that the potential losses which could or might be caused as a result of the breach or negligence as referred to in **Clauses 11.1 to 11.4** (inclusive) are greatly in excess and wholly disproportionate to the amount which is being charged by the Company in respect of the Equipment or the Services;
- 11.5.2 that the Company is anxious to keep to as low a level as reasonably possible for the benefit of the Customer, and all the Company's other customers, its charges in respect of the Equipment and Services provided by it.
- 11.6 The Customer confirms that it has read and fully understood the terms of **Clauses 10 and 11**, and accepts the limitation of liability in this **Clause 11**.

12. DEFAULT OR INSOLVENCY OF CUSTOMER

- 12.1 This Clause applies if:
- 12.1.1 the Customer defaults in any of its obligations to the Company; or
- 12.1.2 the Customer enters into a voluntary arrangement within Part 1 of the *Insolvency Act 1986* as amended by the *Enterprise Act 2000*, or enters into any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors, being unable to pay its debts within the meaning of Section 123(1)(e) or Section 123(2) of the *Insolvency Act 1986*; or
- 12.1.3 the Customer appoints a trustee, receiver, administrative receiver, administrator or liquidator or similar officer in respect of all or any part of its business or assets, or pass a resolution or present a petition that is not discharged within twenty eight (28) days for its winding up or for the making of an administration order (otherwise, in each case, than for the purpose of a bona fide amalgamation or reconstruction); or
- 12.1.4 the Customer ceases, or threatens to cease, to carry on business; or
- 12.1.5 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 12.2 If this Clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel any uncompleted order or to withhold or suspend delivery of any Equipment or performance of any Services.
- 12.3 In the event of an occurrence as outlined in **Clause 12.1**, then the Customer shall indemnify the Company against all loss including loss of profit, costs (including the costs of labour and materials used and overheads incurred) and all other expenses and damages connected with the Contract and its cancellation (the Company giving credit to the value of any materials sold or utilised for other purposes).
- 12.4 If the Customer shall become aware that any of the circumstances mentioned in **Clause 12.1** has or is likely to occur, then the Customer must inform the Company of the occurrence or likely occurrence of such event immediately.

12.5 The Customer shall indemnify the Company in respect of all legal administration and other costs and expenses resulting from any breach by the Customer of these Conditions, or the Contract.

13. ASSIGNMENT

13.1 The Customer shall not without the prior written consent of the Company assign the Contract or any part of it.

14. FORCE MAJEURE

14.1 The Company shall not be liable for any delay in performing or failure to perform its obligations under the Contract if such delay or failure results from an act of God, war, strike, lock-out, industrial action, default of suppliers or sub-contractors, fire, flood, drought, tempest or other event beyond its reasonable control. Such delay or failure shall not constitute a breach of the Contract and the Company shall be entitled to a reasonable extension of time for performing its obligations under the Contract in the event of an occurrence as referred to in this **Clause 14**.

15. NOTICES

15.1 Any notices required or permitted to be given by either party to the other shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice.

16. INTELLECTUAL PROPERTY

16.1 The Customer acknowledges that nothing in this Contract shall entitle it to any rights in the intellectual property of the Equipment, the Company or to any goodwill attaching thereto and it further acknowledges that it shall not acquire any rights in respect thereof.

17. ANTI BRIBERY AND CORRUPTION

17.1 The Customer shall (and shall procure that all its employees and any person associated with it shall):

17.1.1 not engage in any activity which could constitute bribery or corruption and shall comply with the Relevant Requirements;

17.1.2 comply with the Company's relevant anti-corruption and anti-bribery policies as the Company may update them from time to time (and where relevant procedures notified from time to time).

18. GENERAL

18.1 The Contract shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts in the interpretation of the Contract or the resolution of any dispute arising under its terms.

18.2 The failure to exercise, or the delay in exercising, any right or remedy provided by this Contract or by law, does not constitute a waiver of the right or remedy, or a waiver of other rights or remedies.

18.3 The failure of either Party at any time to enforce any provision of this Contract shall in no way affect its right thereafter to require complete performance by the other party of all its obligations under this Contract nor shall the waiver of any breach of any provision be taken or held to be a waiver of any past or subsequent breach of any such provision. No waiver shall be effective unless it is communicated to the other party in writing.

18.4 The rights and remedies provided by the Contract are cumulative and (subject as otherwise provided in the Contract) are not exclusive of any right or remedy provided by law.

18.5 If any of the provisions of the Contract are held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions in question shall not be affected thereby.

18.6 The Equipment and Services referred to in this Contract are based upon current law and legislation in force at the date of the Quotation. In the event of a change in law which necessitates a change to the Equipment or Services, the Company shall be entitled to adjust the Price to cover for any additional costs the Company has or may incur as a result of any change in law. For the avoidance of any doubt, the Company shall not be responsible or liable for any additional costs arising in the supply of Equipment and/or performance of the Services in complying with any subsequent change in law after the date of the Quotation.

18.7 A person who is not a Party to this Contract has no right under the *Contracts (Rights of Third Parties) Act 1999* to rely upon or enforce any term of this Contract.