



Axeon Power Ltd

STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

'The Company'	means Axeon Power Ltd;
'The Customer'	means the person, firm, company organisation whose order for goods and/or services referred to in a quotation or document issued by the Company is accepted by the Company;
'The Goods'	means the products contracted to be sold by the Company to the Customer pursuant to the Customer's order;
'The Delivery Point'	means the place specified in the Company's sales confirmation form for delivery of the Goods.

References to statutes or statutory provisions shall include those statutes or statutory provisions as from time to time amended re-acted or replaced.

2. GENERAL

- (i) All estimates are given and orders accepted and the Goods delivered by the Company subject to and upon the following terms and conditions of sale to which no addition or variation shall apply unless specifically agreed in writing by an authorised representative of the Company.

In the absence of such agreement the Customer shall upon delivery of the Goods or (where delivery is by instalment) the first item thereof to be deemed to have given final and absolute acknowledgement of its acceptance of these terms and conditions in the form herein set out.

- (ii) The relaxation or waiver by the Company of any conditions of any occasion shall not affect the Company's right to enforce any or all of these conditions on any subsequent occasion.
- (iii) No other terms and conditions shall apply notwithstanding any provisions to the contrary which may appear on the Order Form or Purchase Order or any other document issued by the Customer whether or not the same shall be signed by or on behalf of the Company and whether issued either before or subsequent to the acceptance by the Company of the Customer's order.
- (iv) Acknowledgement of receipt of a Customer's enquiry or order or other communication to the Company in connection therein shall not constitute acceptance of that order for contractual purposes.
- (v) The delivery of the Goods (or part thereof) or the sending by the Company to the Customer of a written acceptance signed by the Company's authorised representative issued upon the Company's Form of Acceptance (whichever shall be the earlier) shall alone constitute the Company's acceptance of the Customer's order.
- (vi) If any paragraph or sub-paragraph of these Terms and Conditions shall be found to be invalid, ineffective or unenforceable for any reason, such invalidity, ineffectiveness or unenforceability shall not affect any other paragraph or sub-paragraph hereof.

3. PRICES

- (i) Prices quoted are those ruling at the date of issue by the Company of its quotation and are (unless otherwise stated) inclusive of all packaging and transit insurance costs but not transportation costs which shall be for the account of the Customer. Prices will remain valid for a period of 30 days only from the date of the quotation unless otherwise expressly agreed by the Company in writing, after which time they may be altered by the Company without giving notice to the Customer.
- (ii) Prices are (unless otherwise stated) quoted net of all taxes, import duties, and levies which are or may from time to time be levied by any governmental statutory or local authority upon the sales of Goods and such additions (if any) shall be charged at the rates prevailing at the date of invoice as the case may be.
- (iii) The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

4. CANCELLATION

No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against any loss (including loss of profit), costs (including the cost of all labour and materials used and committed), damages, charges and expenses incurred by the seller as a result of cancellation.

5. PAYMENT TERMS

- (i) Unless otherwise agreed in writing the Customer shall pay the price of the Goods within 28 days of the date of the Company's invoice and the Company shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property and the Goods have not passed to the Customer. The time of payment of the price shall be of the essence of the contract. Receipts for payment will be issued only upon request.
- (ii) No forbearance or indulgence by the Company shown or granted to the Customer shall in any way affect or prejudice the rights of the Company or be taken as a waiver of this or any other clause herein
- (iii) The Company may render interim invoices to the Customer in the event that any work contract to be undertaken for the Customer by the Company shall take more than three months to complete.

- (iv) Subject to any special terms agreed in writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.
- (v) If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:-
 - (a) cancel the contract or suspend any further delivery to the Customer;
 - (b) appropriate any payment made by the Customer to such of the Goods (or the Goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer), and
 - (c) charge the Customer interest (both before and after any judgement) on the amount unpaid at the rate of 4% per annum above Bank of England base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest);
- (vi) If the Company's estimate for Goods shall specify payment in a currency other than £ Sterling the price payable by the Customer shall be increased pro-rata to any increase that may occur in the value of that currency in relation to the £ Sterling between the date of the Company's estimate and the due date of payment for the Goods.

6. TITLE

- (i) Until the Customer makes payment in full for the Goods he shall at all times keep them in his possession and control and shall not remove them without the consent of the Company and, subject to Clause 6(iii), will not otherwise dispose of or deal with the Goods. Title to and property in the Goods shall remain with the Company, notwithstanding delivery thereof to the Customer, until such time as the Company has received payment in full (and cleared funds have been received in full) of all sums due by the Customer to the Company, whether arising under this contract or otherwise.
- (ii) Until such time as title to the Goods shall pass to the Customer it shall hold them as Trustee for the Company storing them separately from other goods in the keeping of the Customer and identified as belonging to the Company. If so requested the Customer shall return the Goods to the Company.
- (iii) The Company will permit the Customer to sell the Goods in the ordinary course of its business (either separately or as part of constructed products), but in that event the proceeds of the sale thereof, whether tangible or intangible, including insurance proceeds, will be held by the Customer as Trustee for the Company to the extent of the Customer's indebtedness to the Company and the Customer shall keep such proceeds of sale separate from monies or other property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7. DELIVERY

- (i) The Company will use its best endeavours to comply with despatch, collection and delivery dates but such dates are estimates only and are not guaranteed neither shall they under any circumstances be deemed to be a term or condition of the contract for sale
- (ii) The Company shall accept no liability of whatsoever nature for failure to meet such dates and such failure shall not entitle the Customer to repudiate or cancel the Contract unless such failure shall have been caused by the wilful default or neglect of the Company
- (iii) Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or if some other place for the delivery is agreed by the Company, by the Company delivering the Goods to that place.
- (iv) If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise that by any cause beyond the Customer's reasonable control or by reason of the Company's fault) then without prejudice to any other right or remedy available to the Company, the Company may:-
 - (a) consign the Goods to the Company's storage facilities and charge the Customer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the contract or charge the Customer for any shortfall below the price under the contract.
- (v) Risk of damage to or loss of the Goods shall pass to the Customer:-
 - (a) in the case of Goods to be delivered at the Company's premises at the time when the Company notifies the Customer that the Goods are available for collection; or
 - (b) in the case of Goods to be delivered otherwise than at the Company's premises at the time of delivery or if the Customer wrongfully fails to take delivery of the Goods at the time when the Company has tendered delivery of the Goods
- (vi) The Company reserves the right to deliver by instalments against any order. Where the Goods are to be delivered by instalment, each delivery shall constitute a separate contract, and failure by the Company to deliver any one or more of the instalments, in accordance with these Terms and Conditions, or any claim by the Customer in respect of any one or more instalments, shall not entitle the Customer to treat the contract as a whole as repudiated.

8. LOSS/DAMAGE IN TRANSIT

The Company shall accept no liability whatsoever for loss or damage to the Goods in transit prior to delivery unless the Customer shall have notified the Company thereof in writing in the case of damaged Goods within three days of the date of receipt by the Customer of the Goods or in the case of non-receipt of the Goods within ten days of the date of their despatch from the Company's premises and the Company's liability shall in any event be limited to a sum equivalent to the invoice price of the lost or damaged Goods.

9. FORCE MAJURE

In the event that the Company shall be delayed in or prevented from carrying out all or any of its obligations under a contract for Sale of Goods as a result of any cause beyond its control including (but not by way of limitation) war, invasion, hostilities, civil war, civil strife or commotion, strikes lock-outs or other industrial disputes, breakdown of plant, failure of third parties to deliver

Goods or materials, storm, flood, fire or any other cause it shall be relieved of all obligations and liabilities incurred under such contract insofar as and for so long as the fulfilment of such obligations and liabilities is thereby prevented, frustrated or impeded.

10. DEFECTIVE GOODS

Any claim which is based upon any defect in the quality or condition of the Goods or their failure to correspond to the contract shall be notified to the Company within seven days of delivery. If the Customer does not notify the Company timeously the Customer shall not be entitled to reject the Goods and the Company shall not have any liability for such defect or failure. PROVIDED ALWAYS that if the Customer can show to the satisfaction of the Company that such defect or fault is due to defective materials or faulty workmanship, the Company may in its sole and absolute discretion either remedy the defect or replace the Goods. In the event of any Goods being found to be defective the Customer will retain the Goods and will not return them to the Company until requested in writing to do so by the Company.

The Company's obligations under this Clause shall not in any event arise in relation to any Goods:-

- (i) which have been tampered with in any way outside the Company's premises; or
- (ii) which have been stored in unusable conditions or for an excessive period; or
- (iii) which have been subject to misuse, negligence or accident; or
- (iv) the quality of which has been impaired as a result of the incorporation of defective material supplied by the Customer;
- (v) defects in which have not been reported to the Company and facilities for inspection to the Company within the shortest practicable time:-
- (vi) which have not been paid for in full by the due date for payment.

11. LIMITATION OF COMPANY'S LIABILITY

Except as expressly stated above all representations, conditions and warranties, express or implied, as to the quality or fitness for any purpose of the Goods are to the extent permitted by law, hereby expressly excluded. The Company shall have no liability to the Customer or to any third party in respect of any loss or defect in the Goods and the Customer will indemnify the Company against any such claims. Under no circumstances will the Company be liable for any consequential loss (including loss of profits) suffered by the Customer, and the full amount of all sums payable to the Company by the Customer hereunder shall remain due and owing provided always that nothing herein shall exclude the Company's liability in respect of personal injury or death. The Company's liability (if any) to the Customer (excepting always liability in respect of personal injury or death), whether in contract, delict, tort, quasi delict or otherwise in respect of (i) any defect in the Goods, (ii) any breach of the contract between the Company and the Customer, (iii) any negligent act or omission by the Company or its employees or agents and/or (iv) any breach by the Company or its foresaid of any duty owed to the Customer in connection with the contract or the Goods shall be limited to the total invoice price of the Goods.

12. INTELLECTUAL PROPERTY RIGHTS (IPR)

Unless agreed otherwise the Company remains the owner of any IPR developed in the course of product development.

13. DEFAULT OR INSOLVENCY OF CUSTOMER

If the Customer makes default in any payment on the due date (time being of the essence) or is otherwise in breach of any of these terms or if the Customer makes default under any contract between the Company and the Customer or if he (being an individual) becomes apparently insolvent or is sequestrated or (being a company) a petition is presented for the making of an administration order or a liquidator or receiver is appointed over the Customer or any of its assets (whether compulsory or voluntary otherwise than a solvent liquidation for the purposes of amalgamation or reconstruction) or if an encumbrance takes possession of the whole or any part of his business or undertaking or execution of a decree or diligence is levied against the Customer, or if the Customer makes or offers to make any voluntary arrangement or composition with its creditors or if the Customer ceases or threatens to cease carrying on its business or any event occurs in respect of the Customer in any jurisdiction outside Scotland which is analogous to any of the foregoing events then in any such case (and without prejudice to any other rights the Company may have):-

- (i) The Company shall be entitled to treat the Contract or any part therefore as repudiated;
- (ii) The Company shall be entitled to repossess and re-sell the Goods delivered to the Customer and not paid for in full and for that purpose to enter upon the property in which they are situated;
- (iii) The Company shall be entitled to suspend all further deliveries to the Customer until the default is made good or to refuse to deliver any further Goods to the Customer and to re-sell any further Goods ordered by the Customer whether they are the balance of an order or the whole part of a further order, provided always that in such event, the Company shall not be liable to the Customer in damages or otherwise in respect of suspension or refusal and the Customer shall not be entitled to treat any such suspension or refusal as a repudiation by the Company;
- (iv) The Company shall be entitled to withhold delivery of the Goods or any part thereof until payment is made in full therefore;
- (v) The Customer shall in any event be liable to make good to the Company its loss of profit on all such Goods and all costs and expenses of repossession, storage, insurance and sale to pay to the Company interest as provided until actual payment in full; and
- (vi) The Customer shall indemnify the Company against all loss (including profits), costs (including labour, materials and overheads) and all other expenses and damages incurred by the Company in connection with the order and its cancellation (the Company giving credit for the value of any materials sold or utilised for other purposes)

14. LIEN

The Company shall be entitled (in addition to any lien arising by law) to a general lien on all the Customer's Goods in the Company's possession (although some of the same may have been paid) for any money due in respect of such goods or in respect of any general or particular balance or other money due from the Customer to the Company, whether under the same or any other order.

15. LAW OF SCOTLAND

These Terms and Conditions and the contract and all matters pertaining thereto shall be governed by the law of Scotland, and the Scottish Courts shall have jurisdiction in relation thereto.