

POWER CAPACITORS LIMITED

CONDITIONS OF SALE

1. DEFINITIONS

`BUYER' means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller

`GOODS' means the goods (including any installment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions

`SELLER' means Power Capacitors Limited

Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. BASIS OF SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.

2.2 No variation to these Conditions shall be binding unless agreed in writing by the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

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- 2.5 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the projected electricity cost savings to be derived from using the Goods and/or any services of the Seller are given in good faith but are not guaranteed and in entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such advice or recommendation.

3. ORDERS, SPECIFICATIONS AND TESTS

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted and/or agreed by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2 Where the Goods are to be manufactured by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or which do not affect their quality or performance.
- 3.4 All specifications, drawings and particulars of weights and dimensions submitted with the quotation are approximate only, and neither these nor any descriptions and illustrations contained in the Seller's catalogues, price lists and other advertisement matter shall form part of the Contract. After acceptance of the quotation a set of certified outline drawings will be supplied free of charge on request.
- 3.5 If tests other than those specified in the quotation or tests in the presence of the Buyer or the Buyer's representative are required, these will be charged for. In the event of any delay on the Buyer's part in attending such tests after seven days' notice that the Seller is ready, the tests will proceed in the Buyer's absence and shall be deemed to have been made in his presence.

4. PRICE

- 4.1 The price of the Goods shall be the price quoted on the Seller's Acknowledgment of Order Form or the Seller's quotation ("the Price"). Quotations shall be valid for 30 days only.
- 4.2 Unless otherwise agreed the Seller reserves the right to amend by written notice the Price quoted to cover any increase in costs of material or labour or overhead expenses or any foreign exchange fluctuation which may take place between the date of the quotation (or the date of the order where no quotation is made) and the date of dispatch (or the date of payment in the case of foreign exchange fluctuation) and which may affect the cost of manufacture or delivery of the Goods.
- 4.3 The Price given by the Seller is on an ex works basis. The Buyer shall be liable to pay delivery, packaging and insurance.
- 4.4 The Price is exclusive of any value-added tax.

5. CANCELLATION OF ORDERS

Subject to clause 7.4 orders for goods may not be cancelled or suspended without the Seller's written consent. Any cancellation or suspension of an order is acceptable only on the express condition that the Seller shall be indemnified against any loss incurred wholly or in part by the cancellation or suspension.

6. TERMS OF PAYMENT

- 6.1 Unless otherwise agreed payment is due in cash upon notification by the Seller that the Goods are ready for despatch. The Seller shall not be bound to deliver any goods until it shall have received payment, and the Seller shall be deemed to have made a sufficient tender of the goods if it shall notify the Buyer that the goods are ready for delivery subject to payment.
- 6.2 The time of payment of the Price shall be of the essence of the Contract.
- 6.3 If the Buyer fails to make any payment within 14 days of notification by the Seller that the Goods are ready for despatch then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - 6.3.1 cancel the Contract or suspend any further deliveries to the Buyer;
 - 6.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

6.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above National Westminster Bank Plc base rate from time to time, to accrue day to day until payment in full is made.

6.4 The Buyer shall not be entitled to withhold any payment due to the Seller or make any set off on any account.

7. DELIVERY AND INSTALLATION

7.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer's premises or, at some other place for delivery agreed by the Parties. The Seller's, or its carrier's, receipt shall be conclusive evidence of delivery.

7.2 It shall be the Buyer's responsibility to provide, at the Buyer's expense any labour and/or off-loading facilities necessary at the place of delivery.

7.3 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence.

7.4 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

7.5 Except where the Seller fails to deliver the Goods by reason of circumstances beyond the Seller's control, including the Buyer's failure to supply adequate instructions, the Buyer shall be entitled to cancel the Contract if the Seller fails to deliver the Goods within 60 days of the estimated delivery date PROVIDED THAT the Buyer shall accept and pay for, at the Price and on a pro rata basis, any goods, being part of the Contract, received within that 60 day period.

7.6 If the Buyer fails to take delivery of the Goods within 14 days of notification by the Seller that the Goods are ready for delivery or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

7.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

7.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to

the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the Price.

7.7 Installation of the Goods by the Seller at the Buyer's premises, or other place of delivery as agreed by the parties, shall form part of the Contract PROVIDED THAT such installation is agreed by the parties to form part of the Contract and PROVIDED FURTHER that the Buyer provides all necessary access and facilities reasonably required by the Seller for the purpose of delivering and installing the Goods.

8. RISK

Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

9. INSPECTION

The Buyer shall examine the Goods immediately upon receipt or as soon thereafter as is practicable and shall notify the Seller in writing within 3 days of receipt of the Goods of any matter by reason of which the Buyer alleges that the Goods, or delivery thereof, are not in accordance with the Contract. If the Buyer does not give such notice the Goods shall be deemed to be in accordance with the Contract and to have been delivered and accepted as such.

10. LIABILITY

10.1 The Seller shall accept no liability for failure to attain any performance figures quoted by the Seller unless the Seller has specifically guaranteed them. If the performance figures obtained on any test provided for in the Contract are outside the rejection limits specified therein, the Buyer will be entitled to reject the Goods. If the Buyer becomes entitled to reject the Goods the Seller may either repay to the Buyer any sum paid by the Buyer to the Seller on account of the contract price thereof or, at the Seller's option, modify or replace the Goods.

10.2 The Seller shall in no respect be liable for any defects and/or failures of the Buyer's existing equipment or machinery or for any other consequential damage or loss suffered by the Buyer caused as a result of the extra electrical loading following the installation of the Goods.

11. MAINTENANCE GUARANTEE

Subject to clause 17.1 the Seller will make good, by repair or at the Seller's option by the supply of a replacement, defects which under proper use appear in the Goods within a period of twelve calendar months after the Goods have been delivered and arise solely from faulty design, materials or workmanship; PROVIDED always that fair wear and tear are excluded

and that defective parts are promptly returned by the Buyer carriage paid to the Seller's works unless otherwise arranged. The Seller's liability under this clause shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the Goods, which are hereby expressly excluded. Save as provided in this clause the Seller shall not be under any liability, whether in contract, tort or otherwise in respect of defects in Goods delivered or damage or loss resulting from such defects or from any work done in connection therewith. The Application of the Maintenance Guarantee is limited to the utilization of capacitors in accordance with conditions laid down in BS EN 60831-1 and BS EN 60831-2 (which shall form part of these conditions) particularly: -

- 11.1 The r.m.s. voltage remains within the following tolerances:-
 - 11.1.1 110% for no more than 8 hours in any 24 hour period;
 - 11.1.2 115% for no more than 30 minutes in any 24-hour period;
 - 11.1.3 120% for no more than 5 minutes in any 24-hour period;
 - 11.1.4 130% for no more than 1 minute in any 24-hour period.
- 11.2 The r.m.s current is no higher than 130% of rated current. This increases being caused by capacitor tolerance, increased voltage and/or frequency, and/or by the presence of non-sinusoidal voltage.
- 11.4 The ambient temperatures into which the Goods are installed should be no greater than: -
 - 11.4.1 A Maximum of 50 degrees centigrade;
 - 11.4.2 A highest mean over any 24 hour period of 40 degrees centigrade; and
 - 11.4.3 A highest mean over any 12 month period of 30 degrees centigrade.
- 11.4 In the case of Goods, or any part thereof, not of the Seller's manufacture, the Buyer is entitled only to such benefits as the Seller may receive under any guarantee given to the Seller in respect thereof.

12. LIABILITY FOR ACCIDENTS AND DAMAGE

Notwithstanding the provisions of Clause 11 the Seller will indemnify the Buyer against damage to the Buyer's property or person or that of others occurring while the Seller is working on the Buyer's premises for the purposes of the Contract to the extent caused by the negligence of the Seller, its sub-contractors or agents, but not otherwise, by making good such damage PROVIDED THAT: -

- 12.1 the Seller's total liability for damage to the Buyer's property shall not exceed £250,000 or the Price, whichever sum is the greater; and

12.2 the Seller shall not be liable to the Buyer for any consequential loss of profit or of contract or any loss or damage of any kind whatsoever.

13. SAMPLES

Notwithstanding that a sample of the goods has been exhibited to and inspected by the Buyer, it is hereby declared that such does not in any way constitute a sale by sample under this Contract. The Buyer shall take the Goods at his own risk as to their corresponding with any sample or as to their quality, condition or sufficiency for any purpose. Any samples submitted to the Buyer and not returned to the Seller's works, carriage paid, within one month from the date of receipt shall be paid for by the Buyer.

14. SELLER'S LIEN

In addition to any right of lien to which it may by law be entitled the Seller shall be entitled to a general lien on all goods of the Buyer in the Seller's possession (although such goods or some of them may have been paid for) for the unpaid price of any other goods sold or delivered to the Buyer under the same or any other contract. The Seller does not accept responsibility for loss or damage of the Buyer's property in the Seller's possession either as a result of the exercise by the Seller of its lien or otherwise.

15. TITLE

Until the Price of the Goods and/or services comprised in this Contract shall have been paid or satisfied in full:-

15.1 The title to the property in the Goods shall remain vested in the Seller (notwithstanding the delivery of the same and the passing of the risk therein);

15.2 The Seller may at any time recover the Goods (if in the Buyer's possession or under the Buyer's control) if any of the events specified in Clause 19 hereof shall occur and/or if the Buyer shall be in breach of the Contract. For the purpose of exercising his rights under this paragraph (b) the Seller, his servants or agents together with all necessary and appropriate transport shall be entitled to free and unrestricted entry upon the Buyer's premises.

15.3 The Buyer shall possess the Goods as bailee of the Seller. The Buyer shall store the Goods for the Seller in a proper manner without charge to the Seller and ensure that it is clearly identified as belonging to the Seller.

15.4 The Buyer shall be entitled to resell or use the Goods, as the fiduciary agent of the seller, in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether

tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

16. FORCE MAJEURE

If the Seller shall be prevented or hindered from performing any of its obligations under the Contract by any circumstances beyond his reasonable control including (but without limiting the generality of the foregoing) strikes, lock-outs or other industrial action, inability to obtain materials or labour, power or machinery, breakdown or failure, further performance of the Contract shall be suspended for so long as the Seller is so prevented or hindered. The Seller shall not have any liability to the Buyer for any direct or consequential loss or damage suffered by the Buyer as a result of the Seller's inability to perform its obligations under the Contract in the aforementioned circumstances.

17. SPECIFICATIONS

- 17.1 The Seller accepts no responsibility for the accuracy or suitability of any patterns, designs, tools, drawings, samples, particulars or specifications ("the Specifications") which shall be supplied by the Buyer or samples provided by the Seller and approved by the Buyer and the Seller shall be entitled to accept the same as being without defect. The Seller shall have no responsibility for the quality or fitness for any particular purpose of any Goods manufactured by the Seller in accordance with any Specifications or samples submitted by the Buyer whether or not such purpose is made known to the Seller and the conditions implied by Sections 13 to 15 inclusive of the Sale of Goods Act 1979 are hereby expressly excluded. The Buyer undertakes to indemnify the Seller and to keep the Seller fully and effectually indemnified from and against all actions, proceedings, claims, costs, loss, damage or expense whatsoever whether arising in contract or in tort which the Seller may suffer or incur as a result of any defect in the Specifications or samples provided by the Buyer whether due to quality, design, fitness for purpose or in any other way whatsoever.
- 17.2 The Buyer represents and warrants to the Seller that neither the Specifications nor the use thereof will infringe any patent, copyrights, registered design or any other proprietary right of any third party and the Buyer further undertakes to indemnify the Seller and keep the Seller fully and effectually indemnified from and against all actions, proceedings, claims, costs, loss, damage or expense whatsoever in respect of any infringement by the Seller of ansit to or from the Buyer shall be deemed to be entirely at the Buyer's risk and the Seller shall not be liable for any loss of or damage to such property whilst in the possession of the Seller or in transit as aforesaid and in no circumstances whatsoever will the Seller be liable for any consequential loss or damage arising therefrom.

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19. DEFAULT OR INSOLVENCY OF BUYER

If the Buyer shall be in breach of any of its obligations under the Contract with the Seller or if distress or execution or other legal process shall be levied upon any of the Buyer's property or if the Buyer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or if being a limited company the Buyer shall go into liquidation whether compulsory or voluntary (not being a voluntary liquidation for the purposes of amalgamation or reconstruction) or suffer the appointment of a receiver of its undertaking property or assets or any part thereof or the Buyer ceases, or threatens to cease, to carry on business or the Seller reasonably apprehends that any of the events mentioned above are about to occur in relation to the Buyer and notifies the Buyer accordingly, the Seller shall at any time thereafter be entitled forthwith to suspend all further performance of the Contract or to determine the Contract or any unfulfilled part thereof or at the Seller's option to make partial performance thereof. Notwithstanding any such termination, the Buyer shall pay to the Seller at the Contract rate for all services performed or Goods received up to and including the date of termination.

20. SEVERANCE

If at any time any one or more of the provisions of these Conditions becomes invalid, illegal or unenforceable in any respect under any law the

validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

21. WAIVER

The rights and remedies of the Seller under the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Seller nor by any failure of or delay by the Seller in asserting or exercising any such rights or remedies.

22. ASSIGNMENT

The benefit of the Contract shall not be capable of assignment by either of the parties without the consent in writing of the other party.

23. NOTICES

Any notice given under the terms of these Conditions shall be served by sending the same to the other party's last known place of business or in the case of a company to the registered office and such notice shall be deemed to have been received by the party to whom it was addressed in the normal course of post.

24. INDEMNITY

The Buyer shall indemnify the Seller in respect of all damage or injury occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection therewith for which the Seller may become liable in respect of the Goods sold under this Contract in the event that the damage or injury shall have been occasioned by the negligence of the Buyer or his servants or agents.

25. ARBITRATION

Any dispute or difference arising out of this Contract shall be referred to the arbitration of a person to be mutually agreed upon or, failing agreement within 14 days of the receipt by the Seller of notice of such dispute or difference of some person appointed by the President for the time being of the Institute of Electrical Engineers.

26. PROPER LAW

This contract shall be governed by and read and construed in accordance with English Law.

27. WASTE REGULATIONS

The impermanent used in many capacitors belongs to a class of materials generally known as P.C.B. If you should wish to dispose of this material,

as, for example, when the capacitor reaches the end of its useful life, you are reminded that disposal should be carried out in accordance with Hazardous Waste regulations.