

## Phi-Power AG - Condition of Sale

Version 1.4 1.8.2020

### 1. INTERPRETATION

(i) The **Purchaser** - shall mean the company, or organisation or person whom accepts the Seller's offer for the sale of Goods.

**Goods** - shall mean any equipment, parts, materials and work specified in the Sellers offer.

**Seller** - shall mean **Phi-Power AG**

**Conditions** - shall mean the terms set out herein and any special terms appended to these terms by Phi-Power AG.

**Contract** - shall mean the agreement between the Seller and Purchaser for the supply of Goods in consideration of the full contract price.

(ii) the layout and headings herein are for convenience and shall not affect their interpretation.

### 2. ACCEPTANCE

(i) Unless previously withdrawn, the Seller's tender is open for acceptance within 30 days only from the date of tender and is subject to confirmation by the Seller at the time of the Purchaser's acceptance.

(ii) Any order placed by the Purchaser against the Seller's tender will not constitute a contract until accepted by the Seller.

(iii) In case of any conflict, variance or inconsistency between these Conditions and the terms of the Purchaser's enquiry or of the order or of any correspondence relating thereto, these Conditions shall take precedence except to the extent that;

(a) these Conditions are excluded or amended by specific reference in writing and

(b) any such exclusion or amendment is agreed by the Seller in writing. No variation of the Contract will be valid unless agreed to by the Seller in writing.

(iv) The parties agree that neither the Seller's tender nor the Purchaser's subsequent Purchase Order shall, or intend to, confer any benefit on any third party.

### 3. CONTRACT LIMITS

The Contract comprises only the Goods specified in the Seller's tender or whatever subsequently the Seller agrees to supply or perform as part of or in connection with the Contract. No document, correspondence or statement shall be part of the Contract unless specifically referred to in the Contract.

Any drawings, performance, specifications or other figures included in the Seller's tender are estimates or indicative only and are not guaranteed unless subsequently agreed in writing.

Seller reserves the right to make any changes in the design or specification of the Goods, providing any changes do not affect the performance or fitness for purpose of the Goods.

### 4. CANCELLATION

The cancellation of an order by the Purchaser shall not be effective without the prior written consent of the Seller and upon such cancellation the Purchaser shall pay to the Seller such a sum as is reasonable in respect of work done, materials supplied or ordered and loss of earnings.

### 5. CONTRACT PERIOD

(i) Any times quoted for delivery of Goods or completion will date from receipt by the Seller of the Purchaser's acceptance and any agreed down-payment together with all information and commercial documents that the Seller requires to proceed with the work. Unless otherwise agreed in writing any such time shall be treated as an estimate only, not involving the Seller in any liability for failure to deliver or complete within such time.

(ii) In any event the time for delivery or completion shall be extended by a reasonable period if delay in delivery or completion is caused by the Purchaser or his sub-contractors or by the nature or lack of the Purchaser's instructions including any tests or inspection beyond those specified in the Contract or by any site conditions which prevent or inhibit progress of the Contract work.

(iii) Where Goods are delivered in instalments, each delivery shall constitute a separate contract.

## 6. PRICE AND EXTRA COSTS

The contract price shall be specified in the Contract. where a price has not been specified, then the price listed in the Seller's published price list current at the date of contract acceptance by the Seller shall apply. The contract price will be increased to cover any direct or indirect additional costs, including the cost of storing, incurred by the Seller as a result of any interruption, suspension, delay or alteration caused by the Purchaser or his sub-contractors or by the lack of or change to the Purchaser's instructions, tests or inspections as specified in the Contract, or any change introduced by the Seller, or currency exchange fluctuations, or regulations and increases in the costs of materials and labour.

## 7. TERMS OF PAYMENT

Prices quoted are net of MwSt (VAT) and of any other tax or duty arising from Government, national or local directive imposed in the Purchaser's country or in the country to which delivery is made. The Seller shall be entitled to recover from the Purchaser by way of addition to the Contract price such amounts as the Seller becomes liable to pay in respect of such taxes or duties.

Payment is due at the time and in the amount specified in the Seller's tender or as otherwise agreed in writing and shall be of the essence of the contract. If payment of any sum due to the Seller is delayed by the Purchaser beyond its due date, the Seller may without prejudice to any other rights;

(i) cancel or suspend any further deliveries to the Purchaser;

(ii) appropriate and assign any payment made by the Purchaser under any other contract with the Seller at the Seller's sole discretion; and

(iii) charge the Purchaser interest on overdue accounts amounting to 8 per cent above the Bank of England reference rate over the period of delay.

## 8. INVALIDITY

If any provision of these Conditions are held by any competent authority to be invalid in whole or in part, the validity of the other provisions hereof and the remainder of the provision in question shall not be affected.

## 9. DELIVERY

Unless otherwise specified in the Contract, the Seller's price does not include delivery charges. Goods and materials that are delivered ex-Works may by agreement be collected by the Purchaser at the Seller's Works. Where the Seller is required to make delivery the Seller will deliver to the place designated in the Contract, or if not so designated, to the place specified in the Seller's tender. All and any delivery costs including disposal of packing materials not specifically included in the Contract price will be charged to the Purchaser.

If the Seller is unable by reason of any cause beyond his reasonable control to despatch or ship the Goods, or if the Purchaser fails to collect the Goods as the case may be, the Seller may;

(i) Sell the Goods at the best price readily obtainable and recover from the Purchaser any shortfall between the contract price and the price obtainable; or

(ii) arrange on the Purchaser's behalf storage at Seller's works. Upon Seller's notification the Goods are in storage, the risk in the Goods shall pass to the Purchaser and any payments due on delivery shall be paid as though the Goods had been delivered to the place stipulated in the Contract or in the Seller's tender. The cost of storage and insurance shall be borne by the Purchaser.

## 10. TESTING

Goods manufactured by the Seller will be subject to the Seller's standard tests. Any additional testing requested by the Purchaser will incur additional charges to the Purchaser's account. The Purchaser will be given twenty four hours notice of any tests at the Seller's works which require the attendance of the Purchaser's representative. In the event of non-attendance by the Purchaser's representative the Seller may proceed with such tests which shall be deemed to have been carried out in the representative's presence. Purchaser shall be liable for the costs of its representative.

The Seller shall not be liable for claims of any defect in the Goods made after inspection where such defect would be apparent on inspection.

## 11. TAKE-OVER AND ACCEPTANCE

Following delivery in accordance with the Contract and unless expressly excluded by the Purchaser to the Seller in writing, the Purchaser shall accept the Goods. Upon acceptance the Purchaser shall be responsible for the operation and maintenance of the Goods except for defects or deficiencies which are the responsibility of the Seller under Warranty.

## 12. FORCE MAJEURE

The contract programme shall be extended by a reasonable period if performance of the Seller's obligations in accordance with the Contract is delayed by industrial dispute, difficulties obtaining raw materials, fuel, labour or any cause which is beyond the Seller's reasonable control, whether existing at the date of the Contract or arising thereafter.

Where an event of force majeure shall continue for a period beyond 90 days from Seller's notification to Purchaser, then Seller or Purchaser may elect to cancel the Contract.

All costs, expenses, charges and damages incurred by the Seller shall be payable by the Purchaser.

### **13. SUB-CONTRACTING**

The Seller may at his discretion sub-contract the whole or any part of his specified supply or performance but this shall not relieve the Seller of his obligations under the Contract.

### **14. DRAWINGS, DESIGNS AND COMPUTER SOFTWARE**

All drawings, designs, software and other information supplied by the Seller in connection with the Seller's tender or any contract arising therefrom are copyright and shall remain the property of the Seller. Such drawings, designs, software and information are submitted in strict confidence for the sole purpose of the Seller's tender and any subsequent contract, operation and maintenance.

Seller will not be liable for any costs, charges or damage arising from errors or omissions in any drawings, designs, software and other information issued, except where such directly arise from Seller's negligence.

The Purchaser is responsible for the accuracy and reliability of all designs, drawings, information and other details or materials supplied by the Purchaser to the Seller. The Purchaser shall indemnify the Seller against all actions, costs and proceedings and against infringement of patent copyright or other exclusive rights which may arise from the use by the Seller of such designs, drawings, information or materials.

### **15. TITLE AND RISK**

Title and property in the Goods included in the Contract will pass to the Purchaser when the Seller has received payment of the Contract price in full and the Purchaser shall not remove or obliterate any nameplates or other identifying symbols which the Seller may have affixed to any part of the Goods.

Any Goods delivered by the Seller to the Purchaser where title and property remains vested in the Seller, may be sold or used by the Purchaser in the ordinary course of the Purchaser's business at the full market value and to the account of the Seller. The entire proceeds from such sale or use shall be held by the Purchaser in trust in a separate account for the benefit of the Seller.

The Purchaser shall insure the Goods to the value of the full contract price against 'all risks' until confirmation from the Seller that property has passed from the Seller to the Purchaser. The Purchaser shall provide evidence of such insurance on request.

Risk in the Goods will pass to the Purchaser upon collection ex-works or delivery in accordance with the Contract. All Goods shall be insured by the Purchaser commencing upon collection or delivery including during storage, erection and commissioning. Evidence of such cover shall be made available to the Seller on request.

If the Purchaser fails to pay the contract price to the Seller or if the Purchaser shall become bankrupt or insolvent, or have a receiving order made against him, or compound with his creditors, or being a corporation commence to be wound up, not being a members' voluntary winding up for the purpose of reconstruction or amalgamation, or carry on its business under a receiver for the benefit of its creditors or any of them, then the property in any Goods delivered to or collected by the Purchaser and not paid for in full shall revert forthwith to the Seller. The Seller shall have the right to enter the Purchaser's premises or any premises where the Goods are located and remove such Goods.

### **16. LEGAL CONSTRUCTION**

The construction, validity and performance of the Contract shall be governed by the Laws of Switzerland and shall be subject to the jurisdiction of the Swiss Courts.

### **17. WARRANTY**

The Seller's warranty obligations shall not commence until the earlier of either the full contract price being received by the Seller from the buyer, or upon the collection ex-works or delivery of Goods in accordance with the Contract. All products supplied in accordance with this quotation should be regarded as prototypes and are supplied with limited warranty.

Except for consumable items and any detail specifically excluded or specified otherwise in the Contract, the Seller undertakes to make good by repair or at the Seller's option by replacement and delivery free-of-charge to the place of original delivery any part or item of the Goods manufactured by the Seller which under proper installation, use, care and maintenance but excluding fair wear and tear becomes defective solely as a result of defective design, material or workmanship (except a design material or workmanship provided or stipulated by the Purchaser or, originally, by a supplier other than the Seller, his subsidiaries or agents) within 12 calendar months after the contract delivery date for the Goods. Any Goods supplied not manufactured by the Seller shall be subject to the warranty provided by the supplier. The Seller's and supplier's obligations hereunder shall only apply providing the defective parts are returned by the Purchaser free-of-charge to the Seller's or supplier's Works unless otherwise arranged.

In the event the Purchaser is fundamentally deprived from using the Goods and can demonstrate the Goods fail to fulfil their normal commercial use and provided such failure is directly attributable to the Seller and the Seller shall have failed to remedy such failure in

a reasonable time, then the Purchaser may reject the Goods. Rejected Goods shall be returned to the Seller free of charge and the Seller's maximum liability shall be the contract price less any costs and charges legitimately deducted by the Seller.

## 18. PATENTS

The Seller will indemnify the Purchaser in the event of infringement of Letters Patent, Registered Design, Trademark or Copyright, published or acquired at the date of the Contract, arising from the use or sale of the Goods by the Seller to the Purchaser provided that the Seller shall not be liable to indemnify the Purchaser if:

- (i) the Goods have been used by the Purchaser in a manner or for a purpose or in a country not specified by or disclosed to the Seller prior to the Contract date, or
- (ii) the Purchaser failed to give the Seller the earliest possible notice in writing of any claim being made or action threatened or brought against the Purchaser, or the Purchaser has failed to permit the Seller at the Seller's expense to conduct any negotiations or litigation that may ensue, or
- (iii) the Purchaser has made any admission which is or may be prejudicial to the Seller in respect of an alleged infringement.

For the purpose of this Clause the Seller may at his own expense procure for the Purchaser the right to continue to use the Goods or to have the Goods modified or replaced.

The Purchaser shall indemnify the Seller from all costs, damages losses, charges and expenses arising from any design, materials, equipment or instruction furnished by the Purchaser which may cause the Seller in the execution of the Contract to infringe any Letters Patent, Registered Design, Trademark or Copyright.

## 19. LIMITATION

The Purchaser agrees not to reverse engineer or otherwise analyse or have analysed the Goods. The results of any evaluation and testing of the Goods shall be shared with the Seller unless otherwise agreed by the Seller any shall not be used for the purpose of unfair or improper competition.

## 20. LIABILITY

(a) The Seller will indemnify the Purchaser against direct damage to property and injury to or death of persons caused either by the negligent acts or omissions of the Seller, his sub-contractors or agents or by the use by the Seller of defective design, material or workmanship (except a design, material or workmanship provided or stipulated by the Purchaser or, originally, by a supplier other than the Seller, his subsidiaries or agents) provided always that:

- (i) the Purchaser gives the Seller the earliest possible notice in writing of any claim being made or action threatened or brought against the Purchaser in connection with such damage or injury;
- (ii) the Seller's total liability for damage to property, injury or death shall not exceed the contract price; and
- (iii) the Seller shall not be liable for any loss of profit loss of use loss of production loss of contracts or for any financial or economic loss or for any indirect or consequential cost or damage of any kind whatsoever.

(b) The Purchaser shall indemnify the Seller against damage to property and injury to or death of persons caused by negligent acts or omissions of all persons other than the Seller's employees, sub-contractors or agents or due to any circumstances outside the direct control of the Seller. Evidence of such cover shall be made available to the Seller on request.

(c) The Seller shall not be liable for any damage, injury, errors or omissions caused by the Purchaser's, or the Purchaser's sub-contractors' personnel whether under the Seller's supervision or not.

(d) The Seller shall not be liable for any loss, injury, death or damage of any kind whatsoever resulting from the sale or use of the Seller's Goods for any purpose other than that specified in the Contract.

## 21. REGULATIONS

The Seller accepts no responsibility or liability for failure to comply with statutory or local regulations or by-laws that affect the siting, construction or operation of the Goods supplied under the Contract unless attention has been drawn to them by the Purchaser prior to placing of the Contract. Any relevant consents or approvals required shall be obtained by the Purchaser.

## 22. ARBITRATION

Any dispute, controversy or claim arising out of, or in relation to, this contract, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules.

The number of arbitrators shall be one or three. The seat of the arbitration shall be Zurich ( unless the parties agree on a city in another country); The arbitral proceedings shall be conducted in English.