



## Intelligent Energy Limited General Terms and Conditions of Purchase

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### 1. Formation and Content of Contract

The "Contract" consists of and the order of precedence is:

- The Purchase Order ("Order") including any "Special Conditions" referred to in it.
- These "General Terms and Conditions".
- The "Specifications" referred to in the Order.

**Buyer** means Intelligent Energy Limited, a company incorporated in England and Wales (registration number 3958217), whose registered office is at Charnwood Building, Holywell Park, Ashby Road, Loughborough, LE11 3GB, United Kingdom.

**Seller** means the person(s), firm or company who supplies the goods to the Buyer.

**Goods** mean any goods or services agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).

If there are any conflicts between aspects of the General Terms and Conditions and any mutually agreed variance to these Terms and Conditions ("Variance"), or any mutually agreed Agreement, such as a Non-Disclosure Agreement, Collaboration Agreement, or Exclusivity Agreement between Buyer and Seller then the mutually agreed Variance or Agreement shall take precedence.

### 2. Acceptance of Order

The Seller shall acknowledge the Order within seven days of receipt. By commencing any activity in connection with this Order, Seller agrees that he has read and understood these Terms and Conditions and irrevocably accepts all Buyer's terms and conditions as set out in this Order, to the exclusion of any terms and conditions of the Seller. The Seller shall be responsible for and shall pay the extra costs, if any, occasioned by failure to inform himself fully.

### 3. Compliance

Goods shall conform to Order requirements, be fit for purpose, and be delivered complete with all instructions, warnings and other data for safe and proper use. Buyer may reject any Goods, which in its reasonable opinion are in breach of any of the foregoing. The Seller shall provide the Buyer a certificate of conformity when the Goods are delivered.

### 4. Assignment/Sub-letting

Seller shall not assign or sub-let except with Buyer's prior written consent.

### 5. Inspection and Testing

Seller will allow Buyer to inspect and witness testing of the Goods during manufacture, processing or storage at any reasonable time and will provide Buyer with all facilities required for inspection and testing. If after testing Buyer is not satisfied that the Goods will comply in all respects with the Contract and so informs the Seller, Seller must immediately take all steps necessary to ensure compliance. If additional inspection or testing is required, Seller will bear all costs, including Buyer's costs for the additional inspection/witness testing.

Inspection and testing under this Clause 5 does not relieve Seller of any liability or imply Buyer's acceptance of the Goods.

### 6. Delivery

Unless otherwise agreed in writing by the Buyer, delivery of the Goods shall take place when they are handed over at the Buyer's place of business in normal business hours, unless otherwise stated in the Contract. Seller shall advise Buyer immediately upon the Seller becoming aware of any likely delay. Seller must furnish programmes of manufacture and delivery that the Buyer reasonably requires. If the Contract includes tests on the Goods after their receipt by the Buyer, then delivery will not be complete until the test(s) have been passed to the unconditional satisfaction of the Buyer. Delivery will not be complete until all documentation has been provided to the unconditional satisfaction of the Buyer.

Order number must appear on the outside of each package, and on all packing slips and invoices. A packing slip must be included in each shipment.

No charge will be allowed for packing, unless agreed upon at the time of purchase. Damage to Goods which are inadequately packed will be charged to the Seller.

If delivery or performance is delayed beyond the contract delivery date(s), the Buyer may demand that the Seller provide for expedited delivery, with costs borne by the Seller. The Buyer reserves the right to seek damages and reasonable costs from the Seller for any loss incurred if delivery or performance is delayed beyond the contract delivery date(s) and such delay is caused by the acts or omissions of the Seller.

### 7. Confidentiality

7.1 The terms of any separately negotiated and relevant Non-Disclosure Agreement (Confidentiality Agreement) between Buyer and Seller shall be incorporated into these Terms and Conditions of Purchase. In the absence of such an Agreement, the following terms shall apply.



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- 7.2 "Confidential Information" means, in relation to a party to this Agreement, information known or used by such party or its affiliated company in connection with its business or technology that is confidential to such party or its affiliated companies, in any form or media, and whether oral or written, and includes, without limitation, concepts, inventions, patents, patent applications, know-how, designs, methodologies, techniques, protocols, procedures, formulations, compositions, compounds including third party compounds, processes, research, specifications, data, technical information, samples including third party samples, instructions, manuals, papers, financial information, marketing, manufacturing and commercial strategies, programs, software or firmware, devices, unique combinations of separate items that individually may or may not be generally known, items for which the Disclosing Party is under an obligation of confidentiality to other Persons, and all analyses, compilations, data, studies, reports or other documents prepared or derived therefrom.
- 7.3 The Seller acknowledges that it is likely, directly or indirectly, to receive or to be exposed to or have the ability to access Confidential Information of the Buyer, whether in written or other materials; through the access of the Buyer's personnel to the premises, equipment or facilities of the Buyer; by oral communication with employees, consultants, or agents of the Buyer; or otherwise.
- 7.4 The Seller shall:
- a) hold all Confidential Information in strict confidence and keep it secure, applying to any Confidential Information at least the same standard of care with which it treats its own proprietary and confidential information (and in any case not less than a reasonable standard of care);
  - b) seek to access Confidential Information, and use Confidential Information, in each case only: (i) for the purpose of performing its obligations under this Agreement; and (ii) in accordance with this Agreement; and specifically refrain from seeking to access Confidential Information, and from using Confidential Information, for its own or any third party's benefit or in any other manner not authorised in writing by the Buyer;
  - c) disclose, or permit access to, Confidential Information only to persons who are its employees, or its independent contractors, who both: (i) have a need to know the Confidential Information in order to give effect to this Agreement or advise in connection with it (or both); and (ii) are subject to nondisclosure obligations substantially similar to those of this Agreement;
  - d) accept responsibility for any access to, use, or disclosure of Confidential Information in violation of the terms of this Agreement and to take such steps as may be required by applicable law to enforce this obligation;
  - e) return to the Buyer (or, at the Buyer's request, destroy and confirm to the Buyer Seller's compliance with this obligation) within 14 days of the expiry (or earlier termination) of this Agreement (or such earlier date as the Buyer may reasonably request) all materials containing any Confidential Information; and
  - f) notify the Buyer immediately if Seller is requested or required to disclose, or permit access to, any Confidential Information to a third party in connection with any civil or criminal investigation or any judicial or administrative proceeding, so that the Seller may if it chooses seek an appropriate protective order.
- 7.5 Notwithstanding clause 7.4, Seller's obligations of confidentiality contained in this Agreement shall not apply:
- a) to the extent required by law, by any court of competent jurisdiction, or by an official regulatory body; or
  - b) to information that: (i) at the time of disclosure was in the public domain or comes into the public domain other than through breach of this Agreement by the Seller; (ii) was known by the Seller (as established by its own records or other competent proof) before it received the Confidential Information, or was exposed to it, or had the ability to access it; or (iii) is lawfully disclosed to the Seller by a third party acting in good faith and not bound by a confidentiality obligation.
- 7.6 The supply of Goods under the Contract shall not constitute a license for the Seller to use the Confidential Information for any purpose other than for which the Confidential Information is provided to the Seller.
- 7.7 On expiry or termination of the Contract (for whatever reason) the Seller shall promptly return to the Buyer or dispose of in accordance with the Buyer's instructions all Confidential Information and other data and documents and copies thereof disclosed or supplied to the Seller pursuant to or in relation to the Contract and shall certify to the Buyer when the same has been completed.
- 7.8 The obligations of confidentiality contained in this Agreement shall continue in force indefinitely.
- 7.9 The Seller shall clearly identify all confidential information supplied by the Buyer as confidential, by appropriate and conspicuous markings
- 7.10 The Seller acknowledges that its breach of this clause 7 would cause the Buyer irreparable injury for which damages would not be an adequate remedy. Therefore, in the event of such breach, the Buyer shall be entitled to extraordinary or injunctive relief in addition to any other remedies it may have.
- 8. Ownership of Intellectual Property**
- 8.1 The terms of any separately negotiated and relevant Joint Development Agreement (Collaboration Agreement) or any other Agreement between Buyer and Seller shall be incorporated into these Terms and Conditions of Purchase. In the absence of such an Agreement then the following terms shall apply.



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- 8.2 "Intellectual Property Rights" includes patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 8.3 All Intellectual Property Rights subsisting in any materials and information (including any drawings, specifications and other data) provided by the Buyer to the Seller in connection with the Contract, shall remain at all times the Buyer's property. The Seller may use the Buyer's Intellectual Property Rights only for the purposes of the Contract.
- 8.4 Subject to the pre-existing rights of either party, or any third party, any Intellectual Property Rights (or any information) arising from, or related to the Buyer's fuel cell systems or technology or in connection with of the Order, including drawings and designs, technical and scientific data, manufacturing techniques and know how, or intellectual property of any kind shall vest in and become the absolute property of the Buyer. The Seller shall not disclose the same to any third party unless otherwise agreed in writing by the Buyer. The Seller shall do all things and execute such documents as may be necessary to assign such property to the Buyer.
- 8.5 The Seller shall defend, indemnify and hold harmless the Buyer (and its directors, officers, agents, employees and associated companies) from and against all claims, liabilities, suits, losses, costs, damages and expenses, including reasonable attorney's fees brought against it by third parties relating to or resulting from:
- a) any actual or alleged infringement of any Intellectual Property Right caused by any Deliverable; or
  - b) the breach of any obligation of confidentiality in this Agreement.
- 8.6 Seller shall not use, reproduce, or distribute, in any manner, Buyer's logo, proprietary graphics, trademark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which the Buyer owns or claims rights in anywhere in the world.

### 9. Exclusivity Agreement

The terms of any separately negotiated and relevant Exclusivity Agreement between Buyer and Seller shall be incorporated into these Terms and Conditions of Purchase.

### 10. Title and Risk

10.1 Risk in and responsibility for the Goods shall not pass to the Buyer until delivery is complete.

10.2 Title to the Products shall pass to the Buyer as soon as work on the same is commenced.

### 11. Default

If (a) in the Buyer's opinion Seller is in default and fails to correct same within 7 days of Buyer's notification, or (b) an order or resolution is passed for the dissolution or administration of the Seller or any person takes any step to appoint a liquidator, manager, receiver, administrator, administrative receiver or other similar officer in respect of any assets of the Seller, Buyer may cancel the Order and Seller shall pay to the Buyer any excess costs involved in obtaining equivalent Goods elsewhere.

Seller shall indemnify Buyer, customer and owner against all damage, loss or injury arising from any default of the Seller in the performance of this Order.

### 12. Payment

Buyer shall pay Seller on the last working day of the month following the month in which the relevant and correct invoice is received or otherwise in accordance with specific payment terms on the face of the Order. All payments to Seller with United Kingdom based accounts will be made by BACS unless otherwise agreed in writing. Seller must provide appropriate information to facilitate payment. No payment shall be made until the Goods called for by the Order have been completed to the satisfaction of the Buyer. Buyer may set off or deduct any sums due from Seller under this or any other order, or for any reasonable and good faith estimate of losses or damages the Buyer is likely to suffer due to any breach of Contract by Seller. If any later assessment of the loss or damage requires a repayment to Seller, repayment will bear no interest and its previous deduction will not be a breach of Contract by Buyer.

### 13. Defects

Buyer may reject any Goods delivered that do not comply with the Contract and Buyer will not be deemed to have accepted any Goods until it has had a reasonable time to inspect them or, if later, within a reasonable time for latent defects in the Goods have become apparent, without prejudice to which Buyer may in any event reject Goods if they are defective.

Seller shall at its cost and expense and with all speed make good by repair or, at Buyer's option, replace any in respect of which there is in the Buyer's opinion any defect in design, materials or workmanship.

### 14. Guarantee

Seller guarantees the Goods against defects in design, materials, equipment and workmanship for the period of 12 months from acceptance unless otherwise stated in the Contract.



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Seller shall at its own expense rework or otherwise make good any defect in the Goods and/or re-perform the work as required by the Buyer, and re-perform such tests as the Buyer may require to ensure that such rework or making good complies with the requirements of the Contract. Seller shall rectify any defects in the Goods within a reasonable time of being called upon to do so, provided that if it fails to do so, or notified the Buyer that it is unable to do so, the Buyer may do so itself or authorise others to do the same and, in the event, the Seller shall reimburse the Buyer for all reasonable costs arising there from.

Notwithstanding anything contained in this clause Seller shall not be required to make good or pay the cost of making good any unfitness in the Goods arising from: a) Fair wear and tear, b) Faulty design the use of which is specified in the Contract and has been furnished by the Buyer.

The Seller shall indemnify the Buyer against all liabilities, costs, expenses, damages and losses suffered or incurred by the Buyer arising out of or in connection with any claim made against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods.

Buyer has the right to assign the benefit of this guarantee to any third party.

### 15. Advertising

The Seller shall not refer to the Buyer's name, trademarks or products in connection with any advertising or promotion or otherwise before or after completion or termination of this Order.

### 16. Termination for convenience

The Buyer may at any time give written notice to the Seller to terminate the Contract forthwith and in such an event the Buyer shall pay, and the Seller shall accept in full and final settlement of all claims under the Contract, such amount as shall represent all costs reasonably incurred by Seller for all work properly done and commitments made by it in performance of the Contract prior to its termination. In no event shall such sum exceed the price set out in the Order.

Buyer may terminate the Contract without prejudice to any other rights and without liability to Seller if:

- Seller's performance or delivery is delayed for 30 days or more.
- Seller fails to comply with delivery dates and thereafter fails to comply with a notice by Buyer calling for immediate delivery.
- Seller fails to deliver by the date that the maximum liquidated damages specified in the Order has been incurred.

The provisions of clauses 7 (Confidentiality), 8 (Intellectual Property), 16 (Termination), 18 (Variation and Waiver), 25 (Severability), 26 (Third Party) and 27 (Governing Law) and such other provisions as are either stated or intended, expressly or by implication, to survive termination and all indemnities shall continue in full force notwithstanding termination of this agreement.

### 17. Free Issue Materials

Free issue materials and equipment remain the property of the Buyer, but are at the risk of the Seller whilst in his possession and the Seller shall insure the same for their full replacement value at all times whilst they are in the Seller's possession. The Seller shall ensure that such items are at all times identified as the property of the Buyer and do not become subject to any encumbrance. The Seller shall deliver such items to the Buyer or account for them upon request by the Buyer. The Seller shall promptly pay the full cost of replacing any material or equipment not accounted for, or any scrap not supported by documentation and any scrap due to faulty machining or manipulation.

### 18. Variation and Waiver

18.1 To be effective, any variation of this Contract must be agreed in writing by each party.

18.2 Any waiver of any right under this Contract is only effective if it is in writing and it applies only to whom the waiver is addressed and to the circumstances for which it is given.

18.3 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy nor shall it prevent any future exercise or enforcement of such right or remedy.

18.4 No single or partial exercise of any right or remedy under this Agreement shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 The Seller shall immediately inform the Buyer in writing of any changes to the company details including company address, management and change to major manufacturing process or special processes performed and change of the location or facility where the Goods are manufactured or supplied from.

### 19. Hazardous materials

Where Goods contain hazardous materials or toxic chemicals, as defined by law or regulations, Seller shall provide, prior to Order commencement, all required notices and information, including without limitation, Material Safety Data Sheets. Seller shall maintain such information current and shall provide Buyer with any revised information on a timely basis. Seller shall ensure that goods are packaged, labeled and transported in accordance with aforementioned law, and ensure carrier is notified of all risk.

### 20. Export control

Seller shall comply with all export control legislation, and label goods appropriately.



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### 21. Supply of Personnel

Any personnel provided by Seller for the purposes of carrying out the Goods shall at all times be deemed to be in the employment of Seller. Any such personnel shall whilst on Buyer premises, comply with standard conditions relating to work on Buyer premises, copies of which are available on request.

### 22. Insurance

Seller shall maintain all necessary insurance including, but not limited to, employer's liability insurance, and insurance for Goods whilst in transit to the Buyer.

### 23. Health and Safety

Seller shall comply with all Health and Safety regulations and legislation.

### 24. Third Party

A person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Contract provided that it does not affect any right or remedy of the third party which exists or is available apart from that Act.

### 25. Severability

If any provision of these conditions is declared void or otherwise unenforceable, the remaining provisions shall remain in full force and effect.

### 26. Governing Law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and subject to the exclusive jurisdiction of the English Courts.

### 27. Force Majeure

The Seller shall not be in breach of its obligations under the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond the Seller's reasonable control. In such circumstances the Seller shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 120 days or more, the Buyer may terminate the Contract by giving 20 days' written notice to the Seller.

If termination occurs under the circumstances identified above, all sums paid to the Seller by the Buyer under the Contract shall be refunded to the Buyer, except that the Seller shall be entitled to payment on a quantum meruit basis for all work done before termination, provided that the Seller takes all reasonable steps to mitigate the amount due.

### 28. Anti-bribery and Corruption

The Seller shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010, the Foreign Corrupt Practices Act ("FCPA") of the United States of America and any applicable laws of the jurisdiction in which the Seller operates ("**Relevant Requirements**")
- (b) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- (c) promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received by the Seller in connection with the performance of Seller's obligations;
- (d) provide such supporting evidence of compliance with the Relevant Requirements as the Buyer may reasonably request.

### 29. Anti-slavery and human trafficking

In performing its obligations, the Seller shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;
- (b) comply with the Buyer's Anti-slavery policy.