

## **MICROPOWER MODULEK (PTY)LTD**

### **TERMS AND CONDITIONS OF SALE**

These terms shall apply in respect of each and every contract for the sale of goods, unless specifically otherwise agreed between the parties in writing.

The provisions of this document shall overrule any terms of contract of the purchaser, unless it is specifically otherwise agreed between the parties in writing.

1.

- i. "The Seller" means Micropower Modulek (Pty) Ltd.
- ii. "The Purchaser" means any party who buys goods from "The Seller"
- iii. "The parties" means the Seller and the Purchaser collectively.
- iv. "The Contract" means each individual transaction concluded between the parties in terms of these terms.
- v. "The goods" means the subject matter ("merx") of the contract.

2. In these terms of sale, delivery of the goods by seller to the purchaser shall be effected ex-works the seller's premises at which point the risk in and to the goods shall pass to the purchaser or the delivery may be effected in such other manner as the parties may agree in the contract. If within 7 (seven) days after the date of notification by the seller that the goods are ready for dispatch, the purchaser does not provide the seller with forwarding instructions, the seller shall be entitled to arrange storage either at its own warehouse at a rate of storage which is market related, or elsewhere, on the purchaser's behalf and at such purchaser's sole risk and expense, and to invoice the purchaser immediately for the goods.

3.

- i. Delivery dates are based on the Seller's prevailing stock situation and are subject to change and to the Purchaser carrying out all its obligations which will include the supplying of all the necessary information to carry out the order being received timeously, from the Purchaser. Further irrespective of the date stipulated for delivery, the Purchaser records that such date shall not be of the essence of the Contract. Consequently, failure by the Seller to deliver in terms of the Contract, shall not entitle the Purchaser to cancel the Contract or any part thereof, or to claim any loss of damages, whether consequential or otherwise, in consequence thereof. The Seller shall however make every endeavour to effect delivery timeously.
- ii. Whenever any delay is caused by any instructions, or the lack thereof, by the purchaser or as a result of industrial dispute or force majeure or any other cause whatsoever beyond the reasonable control of the seller, the time for delivery shall be extended by a reasonable period in the circumstances.

4. The full contract price plus the cost of packing and delivery, unless specifically stated as being included, will be payable without any other deduction or set off at the Seller's premises to the Seller by the Purchaser free of bank exchange. Unless otherwise stated, the price quoted is in South African Rands and is based as at the date of the contract on the prevailing cost with regard to wage rates, cost of materials, freight, applicable insurance, coastal and landing charges, customs, dock and import duties, cartage and railage, rates of exchanges and all other such similar encumbrances but, if after the date of the contract, there is any increase in respect of the costs to the Seller of any of the said items then such increase shall, at the Seller's election be for the Purchaser's account and upon written notice, the contract price shall be deemed to be increased to the extent thereof. Failure by the purchaser to return to the seller any chargeable container within (30) days from date of delivery, will render liable for the cost or charge thereof.

5. All payments shall be made as follows:

- i. C.O.D. (Cash on Delivery)

The Purchaser shall make all payments to the Seller on the date of delivery of the goods to the Purchaser

- ii. In the case of Credit Terms

The Purchaser shall make all payment to the Seller within 30 days from date of delivery of the goods to the Purchaser or date on which the seller invoices the Purchaser whichever is the earlier. All overdue amounts will automatically attract interest at the prevailing bank rate plus 2% (two percent). The Seller also reserves the right to suspend delivery of outstanding goods or demand full payments cash on delivery when the Purchaser has not complied with any of his obligation of any kind in favour of the Seller or any of its holding, subsidiary and fellow subsidiary Seller or any of its holding, subsidiary and fellow subsidiary companies from whatsoever cause arising.

6. In the event of any:

- i. partial delivery made by the Seller or its Agents; or
- ii. delivery before a fixed due date;

the Purchaser shall nevertheless be obliged to accept delivery and liable to make payment as stated in Clause 5. No goods may be returned to the Seller without the Seller's prior written consent.

7. If within 7 days of delivery of the goods to the Purchaser or his nominee, the Purchaser does not notify the Seller in writing of any alleged defects in the goods or shortfall in respect of the quality thereof, the goods will be deemed to be in good working order and condition and the quantities correct. The Seller reserves the right to deliver 5% over or under the quantity ordered in the case of small items counted by weight. No credits will be passed unless the amount due for under-delivery is in excess of R25 or 5% of the order whichever is the lower.

8. If the Purchaser does not accept or requests the Seller to suspend, delay or cancel delivery of the goods, the Seller reserves the right -

- i. to refuse to comply with such non-acceptance or requests and tender delivery. If such tender is not accepted, the Seller shall be entitled to nevertheless invoice the Purchaser for the goods whereupon payment shall become due as contemplated in terms of clause 5; or,
- ii. to comply therewith and in any event claim any additional costs and/or damaged suffered, from the Purchaser, which the Seller shall be entitled to do without prejudice or waiver of any of its other rights in law.

9. Warranty period

A. The seller's manufacturer warrants that the goods sold by the Seller will be free from defects in materials or workmanship, under normal use and service, for the appropriate warranty period. The extent of the warranty period will depend on the period given by the Seller's manufacturer . The Seller's sole obligation under this warranty shall be, at its option, to repair or replace, without charge, any defective component part of such product, within a reasonable time period, or to credit customer's account with the market related value, provided such faulty goods are returned to the Seller at the Seller's premises free of charge . Goods returned in terms of this clause and not found to be defective will be returned to the Purchaser at the Purchaser's expense and subject to a charge equal to 20 % of the invoice value of such goods to cover the costs of testing and other time spend by the Seller.

B. The Seller shall not be liable under this warranty for :

- iii. the goods that the Purchaser alleges are defective and have been repaired or altered by someone other than the Seller's designated personnel or authorised representative, unless such repair or alteration was effected pursuant to prior written approval of the Seller, or
- iv. where the Purchaser fails to notify the Seller of any alleged defect within the period of warranty, or
- v. where equipment has been altered or damaged in any way which the Seller reasonably determines to personally affect the performance and reliability, or where the equipment has been subject to misuse, neglect or accident.

10. The acceptance of any export order is subject to the Seller obtaining the necessary Export License and it is the Purchaser's responsibility to obtain the necessary Permit and/or other requisites authorities. Any costs which the Seller may have incurred prior to being advised of the non-availability of any such Permit or alternatively by the date when the goods are ready for dispatch shall be for the Purchaser's account and in the event of any Import permit not being available within 30 days after the goods are ready for dispatch, the Seller shall be entitled to cancel the contract and apply the conditions of clause 14 below. Alternatively goods held pending the availability of an Import Permit may be invoiced by the Seller 30 days after they became ready for dispatch and notwithstanding the delivery conditions stated in 2(a) above shall be paid for within 30 days thereafter. In such instances packing lists, certified by the Seller's Quality Assurance Manager would be acceptable proof that the goods were available for dispatch.

11. The Seller reserves the right to make any reasonable change to the design or form of any goods ordered during the execution of the contract provided the stated performance, quality and Specifications of the goods remain unaffected.

12. The Seller will make every endeavour to fulfill its obligations. However unless specifically accepted by the Seller, the Seller shall not be responsible for, and the Purchaser shall not be entitled to claim from the Seller any penalties, losses, expenses or damages whether consequential or otherwise from whatsoever cause arising.

13. Notwithstanding any agreed amendments in Clause 12, the Seller shall not be held liable for damages resulting from events over which it has no control. such events include, but are not to be limited to Acts of God or Government wars, strikes, lockouts, civil commotion, embargoes, sanctions, epidemics, crude oil and associated by-products, shortages or delays/damages or loss during transit.

14. In the event of the Seller canceling the contract as a result of a breach by the Purchaser of any of the conditions herein, contained, the Seller shall be entitled without prejudice to any other rights which the Seller may have, to payment of a cancellation fee of 20% of the total value of the contract so cancelled plus the sales value and/or costs of:

. all goods delivered

a. all goods finished and not delivered at the time of such cancellation

b. all materials ordered by the seller specifically for such order whether such materials have been received or not;

c. the cost of all labour accumulated on any unfinished goods in process of manufacture,

d. any special engineering and other cost incurred up to the time of cancellation.

15. All goods delivered by the Seller to the Purchaser shall remain the sole and absolute property of the Seller until such time as the Purchaser pays to the Seller the purchase price thereof . The Seller expressly reserves the right at its discretion to repossess any goods for which full payment has not been received.

16. Unless specifically stated otherwise, all goods supplied by the Seller will be to the manufacturer's standard specifications, which may vary slightly from the basic International Specifications for similar goods.

17. The Seller and all its associated Companies' goods are wherever practicable submitted to strict inspection and standard tests before dispatch, but if further tests are required by the Purchaser then all costs incurred shall be for the Purchaser's account unless specifically otherwise agreed in writing.

18. All descriptive illustrations, shipping specifications, drawings, dimensions, or weights submitted are given in good faith and being approximate only and do not form part of the contract.

19. If at any time a dispute arising out of or relating to the contract or a breach thereof should occur between the Purchaser and the Seller, such dispute, shall, if so required by the Seller be referred to a mutually agreed arbitrator, or failing agreement, to an arbitrator appointed by the President for the time being of the South African Institute of Electrical Engineers. Such arbitrator's decision shall be final and binding on the Seller and the Purchaser. This provision is for the benefit of the Seller only.

20. In the event of the Seller manufacturing or supplying goods to the Purchaser in accordance with the purchasers specifications and/or drawings or executing work in accordance with the Purchaser's instructions or those of its advisers or representatives, the Seller shall not be responsible for the operational efficiency or quality of the goods so supplied or the required performance of work so carried out or the suitability of the goods for any purpose or for any other failure or defects in the goods or any aspects related to the works.

21. Value Added Tax has not been included in the prices quoted and should this be applicable it shall be for the Purchaser's account.

22. No warranties, representations or undertakings of whatever nature have been made or given by or on behalf of the Seller otherwise than stated herein.

23. Notwithstanding any of the provisions contained herein, the risk in and to the goods sold by the Seller to the Purchaser shall pass to the Purchaser on delivery.

24. Should any amount payable by the Purchaser to the Seller not be paid on due date, or any payment by cheque be unpaid or dishonored, or the Purchaser be liquidated, whether provisionally or finally, or commit an act of insolvency or enter into a deed of arrangement or composition with any of its creditors, then the entire balance of all moneys outstanding by the Purchaser to the Seller from whatsoever cause arising, shall, notwithstanding the same not otherwise and in the normal course of business being due and payable or not relate to the contract to which the aforementioned non payment applied, immediately and without notice become due and payable.

25. In the event of the Seller instructing its attorneys to collect any overdue amount from the Purchaser, all legal fees, collection charges and tracing agents fees as between attorneys and own client shall be borne by the Purchaser and all payments made shall firstly be allocated towards such fees and charges thereafter to interest and finally to capital.

26. The parties hereby consent to the jurisdiction of the Magistrate's Court in respect of all amounts or causes of action arising out of the contract even though the amount involved would normally exceed the jurisdiction of such a court.

27. In the case of delivery by carrier, insurance coverage with the carrier is the responsibility of the Purchaser.

28. No relaxation or indulgence granted by the Seller to the Purchaser shall be deemed to be a waiver of any of the rights of the Seller hereunder and such relaxation or indulgence shall not be deemed a novation of any of these terms and conditions.

29. The parties agree that prior to delivery the Seller shall be entitled to withdraw from the Contract by giving the Purchaser written notification by registered post of its intention so to withdraw which notice need not assign any reason therefore. In the case of withdrawal as aforementioned, the Contract shall be deemed not to be null and void and no action for damages, whether consequential or otherwise, shall lie by either party against the other, save that each party shall be entitled to the return of that which it has performed.

30. Any rights which may accrue to the Seller by virtue of the terms and conditions herein contained shall be without prejudice to any other rights which the Seller may have in law.

31. Notwithstanding anything to the contrary herein contained on the Seller posing by prepaid registered post, addressed to the Purchaser a certificate, signed by a duly authorised Manager or Director to the effect that it had delivered and/or supplied the goods pursuant to the Contract, and certifying further that it has complied with its obligations in terms of the Contract, the Purchaser shall be conclusively deemed to have accepted the delivery and/or supply of the goods as due performance by the Seller of all its obligations under the Contract. The Purchaser shall be entitled to avoid the foregoing conclusive deeming provisions, if, within 10 (TEN) days of dispatch to him of the said certificate, the Purchaser gives notice, in writing, by registered post to the Seller of any alleged defects in the Seller's performance, such notice setting out in full his reasons for claiming that the performance by the Seller is incomplete and/or defective. Insofar as the Seller may concede that any of the complaints set out in the above mentioned registered notice of the Purchaser are well founded, the Seller shall, and the Purchaser shall permit the Seller, to remedy and/or complete the said defective performance referred to in such complaints.

32. A Certificate signed by any authorised Manager or Director of the Seller as to the amount of the Purchaser's indebtedness to the Seller shall be conclusive proof and evidence for all purposes of the amount of such indebtedness and without limiting the generality hereof including that of obtaining judgement or provisional sentence judgement against the Purchaser.

33. The Purchaser shall not be entitled to deduct any amount or apply any set off against payments due without the Seller's written consent first had and been obtained.

34. Notwithstanding anything to the contrary herein contained, the Seller reserves to itself the right and shall in its sole discretion be entitled, without notice to modify or withdraw the credit granted to the Purchaser at any time and without giving reasons therefore.

35. The Purchaser and the Seller hereby choose foregoing principal place of business stated on the credit application, order, contract or quotation shall be domicilium citandi et exuctandi for all purposes, whether in respect of court process, notices or other documents or communications, of whatever nature.

36. Without in any way derogating from the provision of Clause 37 it is expressly agreed that no agreement at variance with any one of the conditions herein contained, notwithstanding any provisions thereof or the fact or ostensible acceptance of such agreement shall be binding upon the Seller unless the Seller specifically agrees thereto by incorporating therein the following wording in writing; "It is expressly agreed that this Agreement shall supersede the Seller's "Terms and Conditions of Sale". In the absence of the foregoing the parties agree that the conditions herein contained shall at all times supersede the terms of any other agreement which the Purchaser wishes to rely on.

37. The terms and conditions contained herein constitute the entire agreement between the parties and no consensual cancellation or variation of the foregoing provisions shall be of any force or effect unless reduced to writing and signed by both parties. In the event of any term of hereof being breached by the purchaser and the purchaser failing, upon written demand by the seller to remedy such breach within 3 ( three ) days, then the seller

shall be entitled without prejudice to any other right available at law, to terminate this agreement forthwith, without notice to the purchaser and such termination shall be without prejudice to any rights of the seller to recover inter alia, any costs or damages arising or consequence upon such breach.

38. The parties agree that this agreement shall be governed by and construed with in accordance with South African law. In the event of any term of hereof being breached by the purchaser and the purchaser failing, upon written demand by the seller to remedy such breach within 3 (three) days, then the seller shall be entitled without prejudice to any other right available at law, to terminate this agreement forthwith, without notice to the purchaser and such termination shall be without prejudice to any rights of the seller to recover inter alia, any costs or damages arising or consequence upon such breach.

39. Any and all rights of proprietary nature related to the goods is the property of the seller and/or its supplier and the purchaser shall not in any manner whatsoever use such rights without the written consent of the seller.