

## CONDITIONS OF SALE

### 1. CONTRACT

- 1.1. If K2 Battery Pty Ltd ("**Supplier**") submits any quote, proposal or offer ("**Offer**") to supply any goods ("**Products**") and/or provide any services ("**Services**") to the entity specified in the Offer ("**Purchaser**"), which includes or attaches these conditions of sale, the Purchaser is deemed to have accepted the offer if it signs the Offer, issues an order or a letter of acceptance or the like in any form whatsoever, or if it acts in any other manner consistent with acceptance of the Offer.
- 1.2. On acceptance of the Offer by the Purchaser, the Contract is formed on the terms contained in the Offer (including any specification for the Products or the Services referred to in the Offer) and these conditions of sale.
- 1.3. The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all previous communications, whether oral or written, relating to the subject matter of the Contract. For the avoidance of doubt, any terms or conditions contained in, issued with or printed on any order, letter of acceptance or the like issued by the Purchaser do not form part of the Contract and are of no effect whatsoever.

### 2. GENERAL OBLIGATIONS

- 2.1. The Supplier must supply the Products and/or provide any Services in accordance with the requirements of the Contract and any Technical Specifications included in the Contract.
- 2.2. The Purchaser must pay the price specified in the Offer in respect the Products and/or Services ("**Price**") and in accordance with payment terms specified in the Offer, which may include the requirement for a deposit payment. Unless specified otherwise in the Offer, the Purchaser must pay the Price or the relevant portion of the Price specified in the Supplier's invoice within 7 days of acceptance of the Offer by the Purchaser ("**Payment Due Date**") by way of electronic funds transfer. The Purchaser is liable to pay interest on any outstanding amount not paid by the Payment Due Date calculated on the basis of the Commonwealth Bank of Australia Business Indicator Rate (or any rate superseding it) as published from time to time plus 2%. Interest will accrue daily from the Payment Due Date until the outstanding amount is paid in full.
- 2.3. The Price is FOB at the Supplier's manufacturing facility unless otherwise stated on the Offer and exclusive of GST. The Purchaser must reimburse the Supplier for the amount of any GST payable in respect of any supply made under or in connection with the Contract.

### 3. PRODUCT WARRANTY AND PERFORMANCE GUARANTEE

- 3.1. The Supplier warrants that, they will meet all obligations as detailed in the Supplier's product warranty document titled "**K2 Battery Standard Warranty**" (included in the Product User Manual) which forms part of these Conditions of Sale.

#### **4. LIMITATION OF LIABILITY**

- 4.1 The liability of the Supplier to the Purchaser, whether arising under or in connection with the Contract or the performance or non-performance thereof or anything incidental thereto, and whether for breach or repudiation of contract, by way of indemnity, by statute (to the extent that it is possible to exclude and limit such liability), in tort (arising in respect of negligence, bailment or otherwise), or on any other basis in law or equity is hereby limited and excluded as follows:
- (a) the Supplier shall have no liability whatsoever to the Purchaser for loss of use, production, profit, revenue, business, data, contract or anticipated benefit or saving, or for any delay or for any financing costs or increase in operating costs or any economic loss or financial loss or cost (whether similar to the foregoing or not, and whether suffered by the Purchaser itself or a result of a claim by a third party) or for any special, indirect or consequential loss or damage;
  - (b) the total aggregate liability of the Supplier to the Purchaser is limited to the amount equal to the purchase price paid by the Purchaser to the Supplier for the Products giving rise to the liability
- 4.2 Regardless of any other term of this Contract, nothing in this Contract excludes or purports to exclude any statutory right or warranty that may not be excluded by law.
- 4.3 This clause 4 survives any termination of the Contract.

#### **5. TERMINATION AND INSOLVENCY**

- 5.1 Without limiting any other rights it may have, a party (the "notifying party") may give a written notice to the other party (the "defaulting party") in the event that the defaulting party:
- (a) commits a material breach of the Contract (being a breach going to the root of the Contract); or
  - (b) does not pay any amount owed under the Contract when it is due, each a "breach".
- Such notice must state (i) the alleged breach, (ii) the period in which the defaulting party is required to remedy that breach (such period shall be no less than 7 days in respect of nonpayment and 30 days for any other breach).
- 5.2 If the defaulting party fails to remedy the breach within the required period, the notifying party may, immediately by written notice to the defaulting party, terminate the Contract and recover damages from the defaulting party.
- 5.3 Without prejudice to the rights in this clause 5, if the Purchaser does not pay to the Supplier any amount owed under the Contract when it is due, the Supplier may suspend, at the Purchaser's cost, its performance of the Contract until the payment is made or the Contract is terminated under clause 5.2 or 5.4 whichever is the earlier.
- 5.4 If either party is (or states that it is) insolvent or likely to become insolvent or is subject to an application or an order for the appointment of a liquidator or administrator, is subject to any form of external administration, enters a deed of company arrangement with its creditors or is wound up or likely to be wound up, the other party may at any time by written notice terminate the Contract immediately.

**6. GENERAL**

- 6.1 If any provision or part of any provision of the Contract is invalid, illegal or unenforceable, such provision or part thereof shall be severed from the Contract and the remainder shall continue in full force and effect.
- 6.2 Either party must not assign any of its rights or transfer any of its liabilities under the Contract to any person without the other party's prior written consent, which shall not be unreasonably withheld.
- 6.3 Any specific reference to or listing of items following the words "including", "for example", "such as" or similar expressions is without limitation and does not exclude application to other terms, whether or not in the same class, category or genus as any specified or listed items.
- 6.4 Title in the Products shall not pass to the Purchaser until the Supplier has been paid the Price for them in full and all claims arising from the business relationship have been fulfilled. Until then, the Customer shall be forbidden from pledging or transferring ownership by way of security.
- 6.5 The Contract shall be governed by the law of Victoria, Australia and the parties agree to submit to the jurisdiction of the courts of Victoria and any courts having appellate jurisdiction from them.