

CONDITIONS OF SALE

1. Interpretation

1.1 In these Sale Conditions:

"Buyer" means the entity which 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 instalment of the Goods or any parts for them (unless expressly stated otherwise)) which the Seller is to supply in accordance with these Sale Conditions.

"Seller" means PowerLed UK Ltd a limited liability company registered in England and Wales under number 9436618.

"Sale Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

"Contract" means the contract for the purchase and sale of the Goods.

"Writing" includes e-mail, fax and comparable means of communication.

1.2 Any reference in these Sale 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.

1.3 The headings in these Sale Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the 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 Sale Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Buyer.

2.2 No variation to these Sale Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The use of the Goods is entirely at the Buyer's own risk.

2.4 Any typographical clerical or other error or omission

in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.5 If the sale of the Goods is subject to any **"Special Conditions"** not contained in these Sale Conditions but notified by the Seller the Buyer in writing, then such Special Conditions will be considered part of the Contract and shall be read alongside and incorporated within these Sale Conditions.

3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted 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.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods 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 or paid or agreed to be paid by the Seller which results from the Seller's use of the Buyer's specification to include any settlement of any claim for infringement of any patent, copyright, design, trade mark, or other industrial or intellectual property or other rights of any other person.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory or EC requirements or where the Goods are to be supplied to the Seller's specification which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used and reserved) damages charges and expenses incurred by the Seller as a result of cancellation.

4. Price of the Goods

- 4.1 The price of the Goods shall be the Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer to the Seller.
- 4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation any foreign exchange fluctuation currency regulation alteration of duties significant increase in the costs of labour materials or other costs of manufacture) any change in delivery dates quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate written information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller and unless otherwise agreed in Writing between the Buyer and the Seller all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller

5. Terms of payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled but without any other deduction) within 30 days of end of month and the Seller shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of

the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

- 5.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection or:
- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
- 5.3.2 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
- 5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 4 per cent per annum above National Westminster Bank plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. Delivery

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or if some other place for delivery is agreed by the Seller by the Seller delivering the Goods to that place.
- 6.2 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 unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Sale Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 Subject always to the limitations of liability in clause 8, if the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the

Goods.

- 6.5 If the Buyer fails to take delivery of the Goods 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 (in its absolute discretion):
- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.5.2 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 under the Contract.

7. Risk and Title

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery to the Buyer of the Goods or if the Buyer wrongfully fails to take delivery of the Goods the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Sale Conditions, title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property but, shall be entitled to resell or use the Goods in the ordinary course of its business.
- 7.4 Until such time as title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. Warranties and liability

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond substantially with their specification at the time of delivery and will be free from material defects in material and workmanship for a period of twelve months from the date of their initial use or twelve months from delivery, whichever is the first to expire.
- 8.2 All products are to be returned to point of sale by the Buyer at their cost unless specific agreement is in place with the seller to the contrary.
- 8.3 The above warranty at clause 8.1 is given by the Seller subject to the following conditions:
 - 8.3.1 the Seller shall be under no liability under this Contract or otherwise in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
 - 8.3.2 the Seller shall be under no liability under this Contract or otherwise in respect of any defect in the Goods arising from fair wear and tear, wilful damage, negligence, abnormal working conditions of the Buyer, failure to follow the Seller's instructions (whether oral or in writing) to the extent the same relates to the misuse or alteration or repair of the Goods by the Buyer without the Seller's prior written approval;
 - 8.3.3 the Seller shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
 - 8.3.4 the above warranty does not extend to parts materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.4 Subject as expressly provided in these Sale Conditions all warranties, representations, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law. Accordingly, to the extent permitted by law, the Seller does not warrant that the Goods will be of satisfactory quality, fit for purpose or appropriate for any particular use or application (regardless of any specification provided by the Buyer).
- 8.5 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Sale Conditions.
- 8.6 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of

delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods has been delivered in accordance with the Contract

8.7 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Sale Conditions the Seller shall be entitled to replace the Goods (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

8.8 Except in respect of death or personal injury caused by the Seller's negligence the Buyer hereby undertakes to indemnify and hold harmless the Seller from and against any and all such losses costs liabilities and expenses including special or consequential loss or damages arising out of and in connection with any and all liabilities and obligations of the Seller expressly or impliedly assumed by the Buyer and any and all actions suits proceedings claims demands assessments and judgments in respect of any of the liabilities and obligations referred to in this Contract

8.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control including any Force Majeure Circumstance as defined in Clause 11.

9. Indemnity

9.1 Subject to clauses 9.2, 9.3, 9.4 and 9.5, if any claim is made against the Buyer that the Goods infringe or that their use or resale infringes any patent, copyright, design, trade mark, or other industrial or intellectual property or other rights of any other third party, then unless such claim arises as a result of either (a) the use of the Goods by the Buyer other than in the form supplied at delivery; or (b) use of any drawing, design or specification supplied to the Seller by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against the Buyer in connection with such claim or paid or agreed to be paid by the Buyer in settlement of the claim provided that:

9.1.1 the Seller is given full control of any

proceedings or negotiations in connection with any such claim;

9.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

9.1.3 except pursuant to a final award the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

9.1.5 the Seller shall be entitled to the benefit of and the Buyer shall accordingly account to the Seller for all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and

9.1.6 without prejudice to any duty of the Buyer at common law the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss damages costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

9.2 For the avoidance of doubt, the indemnity at clause 9.1 shall not apply in circumstances where the Buyer installs or applies the Goods as part of another product or uses the Goods in anyway with another product other than in the form supplied at time the Goods were delivered to the Buyer.

9.3 Subject to clause 9.4, the Seller shall not have any liability whatsoever in contract, tort (including negligence), breach of statutory duty or otherwise for any: indirect; economic; incidental; special; exemplary; or consequential loss or damage; loss of profit opportunity, anticipated profit, anticipated revenue, business and/or goodwill, suffered by the Buyer in relation to this Contract even if the Buyer has been advised of the possibility of such damages or losses.

9.4 Nothing in these Sale Conditions excludes or limits the Seller's liability for:

9.4.1 death or personal injury arising out of the negligence or breach of statutory duty of the Seller or its authorised representatives;

9.4.2 deliberate personal repudiatory breach of the Contract by the Seller; or

9.4.3 fraud or anything else that may be excluded or limited by law.

9.5 Subject to clause 9.4, the Seller's aggregate liability whatsoever arising in contract, tort (including

negligence), breach of statutory duty or otherwise shall not exceed the greater of:

- 9.5.1 the amount of the fees received by the Buyer for the Goods at the date such action or claim arises; or
- 9.5.2 £5,000.

10. Insolvency of Buyer

10.1 This clause applies if:

- 10.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or
- 10.1.2 an encumbrance takes possession or a receiver is appointed of any of the property or assets of the Buyer or
- 10.1.3 the Buyer ceases or threatens to cease to carry on business or
- 10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. Force Majeure

- 11.1 The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of the Goods by the Seller being prevented hindered delayed or rendered uneconomic by reason of any Force Majeure Circumstances.
- 11.2 this condition "Force Majeure Circumstances" shall mean any Act of God, riot, strike, lock out, trade dispute or labour disturbance; accident, break down of plant or machinery, fire, flood, difficulty or increased expense in obtaining workmen materials or transport or other circumstances whatsoever outside the reasonable control of the Seller affecting the provision of the Goods or of raw materials therefore by the Seller's normal source of supply or the manufacture of the goods by the Seller's normal means or the delivery of the Goods by the Seller's normal route or means of delivery.

- 11.3 If due to Force Majeure Circumstances the Seller has insufficient stock to meet all its commitments the Seller may apportion available stocks between its customers at its sole discretion.

12. General

- 12.1 Any notice required or permitted to be given by either party to the other under these Sale Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 If any provision of these Sale Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Sale Conditions and the remainder of the provision in question shall not be affected thereby.
- 12.4 Other than instructions from the Seller relating to the storage of the Goods and/or otherwise as set out in clause 8.3 or any Special Conditions (if relevant), these Sale Conditions constitute the sole and entire understanding of the Seller and Buyer in relation to the subject matter of the Contract and supersede all previous agreements, representations and arrangements between the Seller and the Buyer (either oral or written) with regard to the subject matter of the Contract. The Seller and Buyer confirm that they have not entered into the Contract on the basis of any representations that are not expressly incorporated in the Contract. The Seller and Buyer irrevocably and unconditionally waives any rights they may have to claim damages and/or to rescind the Contract for any misrepresentation in relation to the subject matter of this Contract whether or not contained in this Contract or for breach of warranty not contained in this Contract unless such misrepresentation or warranty was made fraudulently. This Contract may only be amended or supplemented in writing and signed by an authorised representative of both the Seller and the Buyer.
- 12.5 The Contract shall be governed by and construed in accordance with the laws of England, and the parties hereby agree to submit to the non-exclusive jurisdiction of the English Courts.