

Vita Energia Solutions Ltd

Terms and Conditions of Supply

#### Article 1: General

In these Terms and Conditions of Supply, the following words have the following meanings:

“Vita Energia Solutions” means Vita Energia Solutions Limited (company number: 05681436) whose registered office address is at Booth & Co, The Hermitage, 15A Shenfield Road, Brentwood, Essex CM15 8AG

“Contract” means any contract between the Customer and Vita Energia Solutions incorporating these terms and conditions for the sale of the Goods and/or the supply of the Services;

“Customer” means the person and/or organisation to whom Vita Energia Solutions supplies Goods and/or Services;

“Goods” means any goods ordered from and which are supplied to the Customer by Vita Energia and/or which are used in the course of the Services and in which title is intended to pass to the Customer once the Services have been completed;

“Liability” means actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), demands, expenses, fines, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities; and

“Services” means the services and/or work to be performed by Vita Energia Solutions for the Customer.

“WEEE” Waste Electrical and Electronic Equipment Regulations 2006 and its successors

These Terms and Conditions shall govern any Contract to the exclusion of any other terms and conditions.

No employee and/or representative of Vita Energia Solutions is authorised to make any representations and/or give any warranties concerning the Goods and/or the Services unless confirmed by an authorised representative of Vita Energia Solutions in writing. The Customer acknowledges that it does not rely on any representation and/or warranty which has not been made in accordance with these Terms and Conditions.

Notwithstanding the provisions of Article 10, all offers or proposals by Vita Energia Solutions are revocable and not binding on Vita Energia Solutions unless a period of validity is stated in the offer or proposal. A Contract shall come into effect on Vita Energia's acceptance of the Customer's order. Vita Energia Solutions has the right to refuse any orders placed by the Customer. It is the responsibility of the Customer to ensure that the order is accurate and for giving Vita Energia Solutions any information which it requires in order to perform the Contract.

## Article 2: Risk, delivery and performance of Services

Dates for delivery and/or performance are estimates only and are not guaranteed. They are also subject to matters outside Vita Energia Solutions' control, including not limited to delivery of the Goods by Vita Energia Solutions' suppliers and delivery by its chosen carrier. However, Vita Energia Solutions shall use its reasonable endeavours to ensure delivery and/or performance on the dates specified.

Deliveries of Goods will usually be made during normal working hours. The Customer shall ensure that the carrier has access to the Customer's delivery address for the purpose of delivering the Goods.

The Customer will allow and/or procure sufficient access to its premises to enable Vita Energia Solutions to perform the Services and it will also provide access to those utilities and resources which Vita Energia Solutions and/or its representatives reasonably require in order to perform the Services.

If the Customer refuses to allow delivery of the Goods and/or performance of the Services then Vita Energia Solutions shall be entitled to withhold delivery and/or performance of any other Goods and/or Services and to treat the Contract as repudiated by the Customer.

Vita Energia Solutions will use its reasonable endeavours to comply with any requests from the Customer to postpone performance of the Services and/or delivery of the Goods but shall be under no obligation to do so. If Vita Energia Solutions does agree a postponement the Customer shall be obliged to pay for the Goods and/or Services as if delivery and/or performance had not been postponed.

The Goods remain at the risk of Vita Energia Solutions until they have passed into the actual control of the Customer or a third party employed by the Customer. Transport damage and/or shortages shall be reported to the carrier by the Customer immediately on arrival of the Goods, with due regard for the relevant instructions and guidelines of Vita Energia Solutions or the item manufacturer or the carrier. Any transport damage must be reported to Vita Energia Solutions within 5 working days of receipt of Goods. Vita Energia Solutions will, as it sees fit, arrange for repair of damaged items, or supply new parts within a reasonable period of time free of charge. Repair and/or replacement shall be the Customer's sole remedy.

The Customer shall be charged for delivery of the Goods, including but not limited to the costs for transport, packaging and insurance.

The Services will usually be performed by Vita Energia Solutions or a sub-contractor of Vita Energia Solutions. If the Services are performed by a sub-contractor, the Customer shall have the benefit of any warranties and/or guarantees that the sub-contractor provides and which Vita Energia Solutions can pass on to the Customer. If the Services are to be performed by Vita Energia Solutions, its insurers may require that certain conditions are fulfilled before they will provide insurance coverage for the Services. For example, the Customer's electrician must be present to isolate and re-energise the required circuits. The Customer shall ensure that it complies with any conditions of Vita Energia Solutions' insurance requirements which are notified to it from time to time.

### Article 3: Price and Payment

The price for the Goods and/or Services shall be as set out in Vita Energia Solutions' order acknowledgement.

Vita Energia Solutions may increase its prices at any time by giving to the Customer 30 days' notice. The Customer may cancel without Liability any Contract in relation to which the price will be increased provided that the notice of cancellation is received by Vita Energia Solutions before the increase is due to take effect.

Vita Energia Solutions' prices are exclusive of VAT for which Vita Energia Solutions will additionally be liable.

Payment of invoices shall be made without any withholding, discount or offset not later than 30 days following invoice date, unless otherwise agreed. Time for payment is of the essence.

If the Customer makes payment later than 30 days, Vita Energia Solutions may (until such time as payment of the outstanding amount is paid in full in cleared funds and without prejudice to any other rights and/or remedies it may have):

- a) charge interest on the unpaid amount at either the rate then applicable by law or 5% above LIBOR (compounded with monthly rests), whichever is the greater sum;
- b) withhold and/or suspend delivery of any further Goods and/or performance of any further Services under any contracts with the Customer; and/or
- c) terminate the affected Contract.

Additionally, Vita Energia Solutions has the right, without prejudice to its other rights, from the moment the said payment period is exceeded, without further notice of default, to charge the Customer all the costs incurred in respect of collection and the protection of its rights, including costs of lawyers and additional costs incurred by the Vita Energia Solutions organisation, such as those in respect of administration, storage and legal advice.

### Article 4: Ownership

Ownership in all Goods will transfer when any associated invoice has been paid. Vita Energia Solutions retains the ownership of all Goods supplied or to be supplied by it to the Customer until the associated invoice has been paid.

As long as the ownership of the Goods supplied has not passed to the Customer, the Customer may not process the Goods, remove them from its actual control, dispose of them or pledge them or grant any other right to them to a third party. The Customer shall not interfere with any markings on the Goods which would identify those Goods as being supplied by Vita Energia Solutions.

If the Customer fails in the fulfilment of its payment obligations towards Vita Energia Solutions or gives Vita Energia Solutions good reason to fear that it will fail in these obligations, the Customer is obliged to return the goods still owned by Vita Energia Solutions to Vita Energia Solutions at its own expense. Following their return to Vita Energia Solutions, the Customer shall be credited for an amount equal to the purchase price applying for the Customer on the day of return, but not exceeding the amount invoiced to the Customer at the time. Vita

Energia Solutions is entitled to make a deduction from the amount to be credited for decrease in value on account of damage, ageing, lack of packaging and costs. The balance of any monies due to Vita Energia Solutions after this credit shall be paid by the Customer within 7 days of receiving a written demand for the balance from Vita Energia Solutions.

The Customer further grants Vita Energia Solutions or an authorised representative to be nominated by it free access at any time to the rooms in which the goods which are still owned by Vita Energia Solutions are located in order to ensure compliance with this clause and, if necessary, remove the Goods.

The Customer shall only use the Goods for the purpose for which the Goods are provided to the Customer. The Customer shall not place the Goods at the disposal of or sell it on to third parties to have it copied or produced.

The Customer shall take responsibility for disposing of the Goods at the end of their life taking due account of the need for proper disposal and recycling according to WEEE and VESL shall have no further responsibility for disposal or recycling of the Goods.

#### Article 5: Repairs, Replacements and Guarantee

Vita Energia Solutions will at its option either refund the price for, repair and/or replace any defective products and/or re-perform any defective Services where the defect is apparent on inspection provided that the defect is notified to Vita Energia Solutions within 14 days of delivery of such Goods and/or performance of the Services. If Vita Energia Solutions is notified of an issue outside the stated time limit, it may, at its sole discretion, offer the Customer the remedies set out in this Article.

Any defective Goods must be returned for inspection if requested by Vita Energia Solutions before it will have any Liability. If the Goods prove to be defective, Vita Energia Solutions shall re-imburse the Customer for the cost of returning the defective Goods. Vita Energia Solutions shall also have the right to inspect the subject matter of any defective Services and shall have no Liability for such defective Services until it has been allowed to make such an inspection.

The Goods provided by Vita Energia Solutions to the Customer that have been manufactured by a third party. Vita Energia Solutions agrees to use its reasonable commercial endeavours to pass on to the Customer the benefit of any guarantee and/or warranty provided by the third party manufacturer of product or components to Vita Energia Solutions in respect of the Goods.

In respect of any Services, Vita Energia Solutions guarantees that the Services will be free from material defects in workmanship for a period of 12 months from the date of completion of the Services. If the Services prove to be defective and are covered by the guarantee then Vita Energia Solutions shall, at its sole option, re-perform the Services or provide the Customer with a refund in respect of the defective element of the Services. Re-performance and/or refund shall be the Customer's sole remedy under this guarantee and is dependent upon the Customer complying with the timetables for notification and inspection set out in this Article. Vita Energia Solutions agrees to re-perform the Services under the guarantee within a reasonable period of time of being notified by the Customer of the defect.

Vita Energia Solutions shall have no Liability to the Customer under the guarantee for Services unless the defect is notified to it within 14 days of the defect becoming apparent or suspected or when it should have reasonably become apparent and/or suspected by the Customer.

Any work carried out by Vita Energia Solutions which is not under guarantee shall be charged for.

Vita Energia Solutions does not accept any Liability for any defective Goods and/or Services caused or contributed to as a result of the Goods being used other than in accordance with the instructions supplied by Vita Energia Solutions.

The repair and/or replacement of defective Goods, the re-performance of defective Services and/or the refund of the price paid for any defective Goods and/or Services shall be the Customer's sole remedy in respect of the supply of defective Goods and/or Services.

#### Article 6: Rights of third parties

Vita Energia Solutions does not warrant nor represent that the Goods and their use do not infringe a third party's intellectual property rights. If it is nonetheless recognised by Vita Energia Solutions or established by an applicable court that any of the Goods supplied by Vita Energia Solutions infringes such a right of a third party, Vita Energia Solutions shall as it sees fit, following consultation with the Customer, replace the Goods concerned with goods that do not infringe the right concerned or acquire a right of use in this regard. If it is not reasonably commercially practicable for Vita Energia Solutions to do either of these things, it may (at its option) terminate the Contract and refund to the Customer any monies paid in respect of the infringing Goods. This will be the Customer's sole remedy.

Where an order has to be executed according to designs, drawings or other instructions issued by or on behalf of the customer, the Customer guarantees that no intellectual property or other rights of third parties are affected by them. The Customer agrees to indemnify and keep indemnified Vita Energia Solution from and against any and all Liability which it incurs as a result of use of the Customer's designs, specifications, drawings and/or any other information.

Unless otherwise agreed in writing, Vita Energia Solutions may subcontract the execution of the order, as a whole or in part, to third parties or arrange for its execution by staff in the employment of one or more third parties, without this actually infringing the rights and obligations arising from the contract with Vita Energia Solutions.

#### Article 7: Liability

Vita Energia Solutions can only be held liable for material damage and personal injury to installations and possessions of and persons of the Customer in so far as this damage is the direct consequence of a demonstrable defect in the Goods and/or Services supplied by Vita Energia Solutions in so far as they do not provide the safe installation and operation that, taking everything into account, should be expected of them.

Vita Energia Solutions will only reimburse the Customer for damage compensated by the Customer to third parties that has been caused in the manner described above if and in so far as the Customer is legally obliged to pay this compensation. Compensation to third

parties by the Customer for any damage referred to in the previous sentence requires the prior approval of Vita Energia Solutions.

Vita Energia Solutions' total Liability per claim is limited to £4,000.

All the provisions concerning exclusion or limitation of the liability of Vita Energia Solutions are likewise stipulated for staff and bodies of Vita Energia Solutions and its product suppliers and any third parties brought in for the execution of the order for which Vita Energia Solutions is liable and their staff.

The Customer shall give Vita Energia Solutions a reasonable opportunity to remedy any matter for which Vita Energia is Liable before the Customer incurs any costs and/or expenses in remedying the matter itself.

Vita Energia Solutions shall have no Liability to the Customer for any (i) consequential losses; (ii) loss of profits; (iii) damage to goodwill; (iv) economic or other similar losses; (v) special damages and indirect losses; (vi) business interruption, loss of business, contracts, opportunity and/or production; and/or (vii) loss of anticipated savings.

Each of the limitations and exclusions of Liability in these Terms and Conditions shall be deemed to be repeated and apply as a separate provision for each of (i) Liability for breach of contract and/or under a Contract (including fundamental breach); (ii) Liability in tort (including negligence); (iii) Liability for breach of statutory duty; and (iv) Liability for breach of common law; except the financial cap on liability which shall apply only once in respect of all types of Liability.

Nothing in these Terms and Conditions shall exclude or limit the Liability of Vita Energia Solutions for death or personal injury due to its negligence or any Liability due to its fraud or any other Liability it is not permitted to exclude or limit as a matter of law.

All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.

#### Article 8: Ownership and use of offers and documentation

All illustrations, drawings, data concerning weights, dimensions, colours, etc, contained in price lists and circulars apply only by approximation. It is for the Customer to ensure that the Goods fulfil the purpose for which they are intended.

All offers, drawings, diagrams, designs, material lists, etc, provided by Vita Energia Solutions remain its property. They may not be copied as a whole or in part without its consent other than an archive copy for the internal use of the Customer and to the extent that they form part of Vita Energia Solutions' confidential information they may not be shown, handed over or in some other way be made known to any third party, nor be used or be made available by the Customer other than for the purpose for which they have been provided by Vita Energia Solutions.

The Customer shall not use and/or disclose any confidential information which is acquired by it about Vita Energia Solutions' business and/or given by Vita Energia Solutions to the Customer and/or generated by the Customer from Vita Energia Solutions' confidential information except in the proper performance of this Agreement.

Vita Energia Solutions may alter the operating specification for the Goods at any time by giving notice to the Customer of the change in writing. If the alteration to the specification has a material adverse effect on the Goods and means that the Goods no longer achieve the purpose for which the Customer is buying them, the Customer may terminate the Contract without Liability by giving notice to Vita Energia Solutions within 7 days of receiving notice from Vita Energia Solutions of the change in specification.

#### Article 9 : Force majeure

Notwithstanding the provisions of other articles, under no circumstances is Vita Energia Solutions liable for any claim if it cannot fulfil its obligations towards the Customer as a consequence of force majeure. Force Majeure is regarded as all circumstances that prevent normal execution of the order, such as conditions of war, fire and other destructive events, business interruptions in whatever form, strikes, government measures, delay in deliveries as a consequence of contention of intellectual property right, etc. If Vita Energia Solutions is affected by a force majeure event which prevents performance of the Contract, the time for performance of the affected obligations shall be extended for a period equal to the period that such event or events delayed performance. Its obligations under the Contract shall be suspended during the force majeure event.

If the suspension has lasted three months or longer or as soon as it is certain to last at least three months, either party can terminate the respective part of the Contract with immediate effect by registered letter, without the parties being obliged to compensate one another for any damage. In the case of partial fulfilment by Vita Energia Solutions of the Contract the Customer shall owe a proportionate amount of the total price in respect of the Services performed and/or the Goods actually supplied at the date of termination.

If third parties on which Vita Energia Solutions is dependent for the execution of the order fail to fulfil their obligations towards Vita Energia Solutions or fail to fulfil them on time by virtue of the circumstances that according to this article would have constituted force majeure for Vita Energia Solutions, this non-fulfilment or non-fulfilment on time by these third parties also constitutes force majeure towards the customer for Vita Energia Solutions itself.

#### Article 10: Termination

Vita Energia Solutions may immediately terminate a Contract by giving notice in writing to the Customer if the Customer (i) fails to make any payment when due; (ii) is in breach of the Contract (and such breach has not been remedied within 14 days of receiving notice requiring it to be remedied); (iii) the Customer persistently breaches any one or more terms of the Contract; (iv) ceases or threatens to cease to carry on business; and/or (v) is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances.

On termination:

(a) Vita Energia may enter, without prior notice, any premises of the Customer where the Goods owned by Vita Energia Solutions may be and repossess and dispose of or sell any Goods found which are owned by Vita Energia Solutions so as to discharge any sums due to it under the Contract or any other agreement with the Customer;

(b) The Customer is automatically no longer entitled to re-sell, use or part with possession of the Goods owned by Vita Energia Solutions until Vita Energia Solutions has been paid in full all sums due to it from the Customer unless it has the prior written consent of Vita Energia Solutions;

(c) Each party shall return to the other party any confidential information of that other party which is in its possession and/or under its control;

(d) Vita Energia Solutions may withhold the performance of any Services and/or delivery of any Goods in progress; and

(e) all monies due to Vita Energia Solutions shall immediately become due and payable.

#### Article 12: Varying provisions

Variations of these Terms and Conditions are only effective if they have been confirmed in writing by Vita Energia Solutions, referring specifically to the variation of these Terms and Conditions. The applicability of a reference to general terms and conditions (of purchase) of the Customer is expressly rejected by Vita Energia Solutions.

#### Article 13: General

These general terms and conditions of delivery and the contracts to which they apply are governed by the law of the United Kingdom and the parties agree to submit to the [non] exclusive jurisdiction of the English Courts.

All third party rights are excluded and no third party has any right to enforce the Contract. Any rights of a third party to enforce the Contract may be varied and/or extinguished by agreement between the parties to the Contract without the consent of the third party.

The Customer may not assign its interest in the Contract (or any part of it) without the consent of Vita Energia Solutions. Vita Energia Solutions can assign and/or sub-contract any of its rights and/or obligations under the Contract at any time without the Customer's consent.

No waiver by Vita Energia of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

#### Article 14: Installation Safety

If VESL personnel install Goods for a Customer on a Customer site or VESL arranges contract installation of Goods for the Customer, Customer shall provide and take responsibility for making available:

(a) A generally safe environment for persons making the installation.

(b) Electrical isolation of wiring circuits where VESL products are being installed.