

TERMS AND CONDITIONS OF SALE

The following terms and conditions will be incorporated into the contract between Simpover and the purchaser for the sale of goods referred to in the attached invoice.

1. INTERPRETATION

1.1 IN these terms and conditions unless the context otherwise requires:

“goods” means the goods described in the attached invoice

“purchaser” means the person named as purchaser in the attached invoice or if such person is not so named the person purchasing the goods

“Simpover” means assembler/supplier of the goods

2. PURCHASE PRICE

2.1 The purchase price of the goods will be that applicable at the date of delivery thereof to the purchaser. Simpover reserves the right to increase the purchase price after the date of sale to include the amount of any increase in costs affecting the cost of supply, production and/or delivery of the goods due to circumstances beyond the control of Simpover between the date of the contract and the date of delivery.

2.2 Unless expressly included in the purchase price, sales tax, goods and service tax and any other taxes and duties assessed or levied in connection with the goods or the supply of the goods to the purchaser are not included in the purchase price and shall be the responsibility of the purchaser. Where the payment of such taxes or duties is Simpover's responsibility, the purchase price shall be increased by the amount of such taxes or duties. Where the purchase price expressly includes any taxes or duties, any increase in the amount of such taxes or duties between the date of the contract and the date of delivery of the goods shall be the responsibility of the purchaser and the purchase price shall be increased accordingly.

3. QUOTES

3.1 Where these terms and conditions of sale form part of a written quotation, the quotation is open for acceptance for thirty (30) days from the date thereof but may be withdrawn by Simpover at any time before acceptance. The purchaser will give written notice of the acceptance of any quotation.

4. TERMS OF PAYMENT

4.1 Unless otherwise agreed at the time the contract is entered into, payment of the purchase price shall be made on delivery of the goods.

4.2 In cases where Simpover has expressly agreed in writing to extend credit to the purchaser payment of the purchase price shall be made without deduction 7 days after the date of delivery of the goods (or any of the goods) and the purchaser will not be entitled to withhold, reduce or defer any payment on account of any claim, counterclaim, set-off or otherwise.

4.3 Any additional payments due by the purchaser pursuant to any provision of the contract shall be added to the purchase price of the goods and paid at the time provided for payment of the purchase price in these conditions of sale.

4.4 If Simpover shall at any time deem in its absolute discretion that the credit standing of the purchaser is unsatisfactory, it may require security for payment and may suspend performance of its obligations under the contract until the provision of such security. All costs and expenses of or incurred by Simpover as a result of such suspension and any recommencement shall be payable by the purchaser upon demand.

4.5 If payment in full is not received by Simpover by the due date the purchaser shall pay penalty interest at the rate of 4% per annum above the overdraft rate payable by Simpover to its bankers from time to time for the period from the date payment was due until payment is received by Simpover but without prejudice to any of Simpover's rights and remedies in respect of such default arising from nonpayment on the due date.

4.6 The purchaser will also be liable for all costs and expenses incurred by Simpover as a result of the purchaser's default.

5. DELIVERY

5.1 Unless otherwise agreed in writing by Simpover the purchaser will uplift the goods from Simpover's place of business or otherwise as stipulated by Simpover.

5.2 If Simpover agrees to arrange delivery of the goods, it will be entitled to deliver the goods to the site nominated by the purchaser at any time between 7.00 a.m. and 8.00 p.m. on any day other than a public holiday. The goods may be delivered and shall be deemed delivered by Simpover to the delivery site notwithstanding that the purchaser or an authorised agent is not present.

5.3 All claims for errors or short delivery must be made to Simpover in writing within 7 days of the date of delivery of the goods.

6. RISK

6.1 The purchaser shall be responsible for any loss, damage or deterioration of the goods due to any cause whatsoever from the date of delivery and in particular Simpover will not be responsible for any loss or damage in transit where Simpover has agreed to deliver the goods to the purchaser.

7. OWNERSHIP

7.1 Property in the goods shall be retained by Simpover until the purchase price is paid in full.

7.2 Until payment in full has been received by Simpover the purchaser will be deemed to be acting as the agent of Simpover. If the goods are sold to a third party by the purchaser then the proceeds of such sale shall be held by the purchaser in trust for Simpover.

7.3 If the goods are intermingled with other goods in such a manner that they become an integral part of any other object then such object shall be deemed to become the property of Simpover until the purchase price has been paid to Simpover.

7.4 Until payment of the purchase price in full to Simpover, Simpover shall be entitled to enter onto the purchaser's premises or any other premises where the goods are stored or thought to be stored to inspect and/or repossess the goods.

8. COPYRIGHT

8.1 Copyright in all drawings, specifications and other technical information provided by Simpover in connection with the contract shall remain vested in Simpover.

9. DIMENSIONS AND SPECIFICATIONS

9.1 Dimensions and specifications contained or referred to in the contract or in any catalogues or other publications maintained or issued by Simpover are estimates only. Unless otherwise expressly agreed in writing it is not a condition of the contract that the goods will correspond precisely with such dimensions and specifications, and customary tolerances, or in the absence of customary tolerances, reasonable tolerances shall be allowed.

10. DELAY

10.1 If the contract stipulates a time for the delivery of the goods such time shall be approximate only and shall not be deemed to be of the essence of the contract.

10.2 Simpover shall not be liable for failure to deliver or for any delay in delivery where such failure or delay is occasioned by matters outside its control.

10.3 If the manufacture, supply or delivery of the goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the purchaser, Simpover may, without prejudice to its other rights and remedies, require payment by the purchaser of such portion of the purchase price as represents the extent to which Simpover has performed the contract together with any expenses or additional costs incurred by Simpover as a result of such delay. In the event of such delay continuing beyond a reasonable time, Simpover may terminate the contract without prejudice to any other right or remedy.

11. WARRANTIES AND LIABILITIES

11.1 In any case where a defect due to faulty design, or workmanship appears in the goods within a period of 12 months from date of purchase and such goods are returned to Simpover within that period, Simpover will make good such defect, at its option, by replacement or repair. (However cells are only guaranteed for 6 months if un-tampered with).

11.2 In any case where a defect due to unfitness for the purpose (as specified by Simpover) unsafeness or unacceptable appearance, appears in goods within a period of 7 days from the date of purchase and such goods are returned to Simpover within that period Simpover will make good such defect at its option, by replacement or repair. Simpover will not be liable for any defect in or damage to goods arising from the failure of the purchaser or any other person to use the goods for the purposes for which they are intended and/or as stipulated by Simpover or arising from the negligence of the purchaser or any other person. Simpover will not refund a battery pack simply because the purchaser changes their mind or the product the pack was intended for is found to be faulty and the battery pack is working as intended.

11.3 Simpover's liability for any defects in goods of whatsoever nature and howsoever arising will (subject to clause 11.4) be limited to its obligations in the circumstances stipulated in clauses 11.1 and 11.2 hereof and such liability will be in lieu of any other warranty express or implied, statutory or otherwise, and in particular and without limiting the generality of the foregoing Simpover will be under no liability for consequential losses arising out of or in connection with any defect in goods. 11.4 Notwithstanding the provisions of clause 11.1, 11.2 and 11.3 hereof it is hereby agreed and declared by Simpover that in any case where the foregoing provisions are contrary to the provisions of the consumer Guarantees Act 1993 and which, in terms of the said Act, cannot be modified by agreement between the parties, the foregoing provisions shall be modified in the manner and to the extent necessary to comply with such provisions of the said Act.

12. ASSIGNMENT

The purchaser will not be entitled to assign all or any of its rights or obligations under the contract.

13. REPAIRS

Goods sent to and held by Simpover for repair will be at the owners risk and if left for more than 8 weeks with no instructions may be disposed of.

14. ENTIRE AGREEMENT

Simpover and the purchaser acknowledge that in the absence of any written agreement between the parties these terms and conditions constitute the entire agreement between them and that there have been no representations made by either party to the other except such as are expressly set out herein.