



**the uninterruptible power suppliers**

**powerprotection**

## TERMS AND CONDITIONS FOR THE SALE OF GOODS

### 1. Definitions & Interpretation

In these Conditions, the following words shall have the following meanings:

"Buyer" means the person(s), firm or company who purchases the Goods from the Seller;

"Contract" means the contract between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;

"Goods" means any goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them); and

"Order Form" means any written, faxed or email communication intended by the buyer as an order and accepted by the seller as an order

"Seller" means UPS Direct Ltd, registered at Column House, London Road, Shrewsbury, Shropshire, SY2 6NN

1.2 In these Conditions, references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.3 In these Conditions, headings will not affect the construction of these Conditions.

### 2. Application Of Terms

2.1 The Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 Each order for Goods by the Buyer from the Seller shall be in writing and shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.3 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer.

2.4 Any quotation is given by the Seller on the basis that no Contract shall come into existence until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Seller has not previously withdrawn it, unless the seller has specified in that same quotation that it is valid for a longer period

### 3. Price & Payment

3.1 The price for the Goods [(including delivery)] shall be the price stated by the seller at the time a quotation is issued. The Seller's prices exclude VAT, where applicable, and all other taxes or duties of whatsoever kind and unless otherwise agreed in writing by the Seller The Seller reserves the right, at the Seller's discretion, to vary any prices quoted by it for any costs incurred by the Seller after the date of the quotation as a result of (a) any alterations in specifications, quantities or production, delivery or performance schedules or any suspension of work requested by the Buyer, (b) any delay in the supply by or on behalf of the Buyer of any instructions, data or materials (including "free issue" items) or any inaccuracy, insufficiency or defect therein or non conformity to their specifications (whether or not apparent on inspection), (c) any fluctuation in the cost of materials, equipment, labour, transport or utilities, arising in each case from whatever cause.

3.2 Payment of the price for the Goods is due within 30 days of the date of delivery of the Goods, unless a longer period is specified by the seller in writing prior to accepting the order

3.3 If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to charge interest on the outstanding amount from the due date at the rate of 3% of the base lending rate of Santander Business Bank accruing on a daily basis until payment is made.

3.4 All amounts due to the Seller unless otherwise agreed in writing, shall be payable in the currency stated on the Seller's quotation.

3.5 The Buyer shall also pay (as a debt) all legal and other costs incurred by the Seller in recovering (a) any amounts owing from the Buyer and (b) any Goods in which title has been retained by the Seller. Such costs shall be due for payment immediately on invoice.

#### **4. Description**

4.1 All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.

#### **5. Delivery**

5.1 If delivery is included in any Order the Seller will deliver the Goods ordered by the Buyer to the address for delivery specified in the Order Form.

5.2 Delivery will be made as soon as possible after the Buyer's order is accepted and by a date specified by the seller in the quotation or acknowledgement of order.

5.3 Any dates specified by the Seller for delivery of the Goods are intended to be an estimate, and time of delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

5.4 If the Buyer fails to take delivery of any Goods when tendered or to provide adequate delivery instructions or to collect them when notified they

are ready for collection the Seller at its discretion may exercise any or all of the following rights, namely, to store the Goods at the risk of the Buyer, to require the Buyer to pay all storage, transportation, handling or other charges (including expenses in connection with the delay or detention of vehicles) incurred by the Seller as a result of such failure or to require the Buyer to pay for the Goods as though delivery had taken place.

#### **6. Risk/Title**

6.1 The Goods are at the risk of the Buyer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of the Goods.

6.3 Until title passes: the Buyer shall hold the Goods as bailee for the Seller and ensure that they are at all times clearly identified as the property of the Seller. The Buyer shall notify any purchaser of the Goods of the Seller's interest and title in the Goods where title is still retained by the Seller at the time of sale by the Buyer. The Seller shall be entitled at any time on demand to repossess, remove from other equipment (without being liable for any damage thereby occasioned) and sell all or any of the Goods and thereby terminate (without any liability to the Buyer) the Buyer's right to sell them, and enter any premises where the Goods are located for the purpose of inspecting or repossessing them

#### **7. Liability**

7.1 If the Goods delivered are damaged or defective or the delivery is of an incorrect quantity, the Seller shall have no liability to the Buyer unless the Buyer notifies the Seller in writing of the problem within 10 working days of the delivery of the Goods.

7.2 New equipment, components and spare parts supplied by the Seller are warranted to be free from defects in materials and workmanship at the time of delivery for a period of twelve (12) months from the date of commissioning or eighteen (18) months from readiness to dispatch, whichever is the earlier.

The above warranty shall not extend to: -

7.2.1 Any accessories or proprietary fittings whatsoever.

7.2.2 Goods used for a purpose for which they were not designed.

7.2.3 Goods, which in the opinion of the Seller have been altered, used, serviced, maintained or stored otherwise than in accordance with the Seller's recommendations (whether oral or in writing).

7.2.4 Goods from which the Seller's number or markings have been removed or altered.

7.2.5 Defects arising from any drawing design or specification supplied by the Buyer.

7.2.6 Defects arising from fair wear and tear, willful damage, negligence, abnormal working conditions, misuse, alteration or repair without the Seller's approval.

## **(7. Liability continued...)**

7.2.7 Defects arising from failure to follow the Sellers recommendations and operating practices (whether oral or in writing) and subject to any specified load limitations.

7.3 If the Buyer does not receive the Goods ordered by it within 30 days of the date of the Order Form, the Seller shall have no liability to the Buyer unless

the Buyer notifies the Seller in writing of the problem within 40 days of the date of the Order Form.

7.4 If the Buyer notifies a problem to the Seller under either Condition 7.1 or Condition 7.2, the Seller's sole and exclusive obligation will be, at the Buyer's option:

- to make good any shortage or non-delivery; or
- to replace or repair any Goods that are damaged or defective; or
- to refund to the Buyer the amount paid by the Buyer for the Goods in whatever way the Seller chooses.

7.5 Save as precluded by law, the Seller will not be liable to the Buyer for any indirect or consequential loss, damage or expenses (including loss of profits, business or goodwill) howsoever arising under or in connection with the Contract and the Seller shall have no liability to pay any money to the Buyer by way of compensation other than to refund to the Buyer the amount paid by the Buyer for the Goods under Condition 7.3.3 above.

7.6 The Buyer must observe and comply with all applicable regulations and legislation, including obtaining all necessary customs, import or other permits to purchase the Goods from the Seller. The Seller makes no representation and accepts no liability in respect of the export or import of the Goods.

7.7 Notwithstanding the foregoing, nothing in these Conditions is intended to limit any rights the Buyer might have as a consumer under applicable local law or other statutory rights that may not be excluded, nor in any way to exclude or limit the Seller's liability to the Buyer for any death or personal injury resulting from the Seller's negligence.

## **8. Notices**

Unless otherwise expressly stated in these Conditions, all notices from the Buyer to the Seller must be in writing and sent to the Seller at UPS Direct Ltd, Column House, London Road, Shrewsbury, Shropshire, SY2 6NN. All notices from the Seller to the Buyer will be sent to the Buyer's address specified in the Order Form.

## **9. Sub-Contractors**

The Seller may at its discretion sub-contract all or any of its obligations under the Contract but the Contract shall not be assigned by the Buyer without the Seller's prior written consent.

## **10. Events Beyond the Seller's Control**

The Seller shall have no liability to the Buyer for any failure to deliver the Goods or any delay in doing so or for any damage or defect to the Goods delivered that is caused by an event or circumstance beyond the Seller's reasonable control including, without limitation, strikes, lock-outs and other industrial disputes, breakdown of systems or network access, flood, fire, explosion or accident.

## **11. Invalidity**

If any of these Conditions (or part of any of these Conditions) is unenforceable (including any provision in which the Seller excludes its liability to the Buyer) the enforceability of the remaining Conditions (or remaining part of any Condition) will not be affected.

## **12. Third Party Rights**

Notwithstanding any other provision of the Contract, nothing in the Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

## **13. Governing Law**

The Contract shall be governed by and interpreted in accordance with English law and the English courts shall have jurisdiction to resolve any disputes between the Seller and the Buyer.

#### **14. Maintenance Contracts**

14.1 Any maintenance or service agreement between the Seller and the Buyer is a separate contract from the sale of goods.

14.2 Payment for any such maintenance or service agreement must always be received by the Seller before the agreement becomes operative.

14.3 All details of charges, standard maintenance visits and emergency response times will be defined in a proposed agreement and will become binding upon receipt and acceptance of an order from the Buyer in respect of that order

14.4 The extent of the Sellers liability for defect during the period of maintenance will be limited by the same criteria as apply to liability for defect during warrantee (7.2.1. to 7.2.7)

#### **15. Entire Agreement**

The Contract sets out the entire agreement between the Seller and the Buyer. Nothing said by any sales person on behalf of the Seller should be understood as a variation of the Contract or as an authorised representation about the nature or quality of the Goods. Save for fraud or fraudulent misrepresentation,

the Seller shall have no liability for any such representation being untrue or misleading.

No variation of or amendment to the Contract shall bind either party unless made in writing and signed by the authorised representatives of both parties.