

## Sanken Power Systems UK Ltd. – Conditions of Sale

### 1) Application

These conditions apply to all sales of goods by the Company to any purchaser ("the Customer") and shall apply in place of and prevail over any terms or conditions contained or referred to in the Customer's order or in correspondence or elsewhere or implied by trade custom practice or course of dealing unless specifically agreed to in writing by an authorised representative of the Company and any purported provisions to the contrary are hereby excluded or extinguished. The term "goods" in these Conditions shall also include software in whatever form and materials and/or goods of the Customer on which the Company has carried out any work.

### 2) Quotations and Acceptance

- A) A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise the same at any time prior to the Company's acceptance of the Customer's order.
- B) The Company's acceptance of the Customer's order shall be effective only where such acceptance is made on the Company's printed Order Acknowledgement form duly countersigned by an authorised representative of the Company.

### 3) Prices

- A) The prices payable for the goods shall be those contained on the Company's Order Acknowledgement form. The Company shall have the right at any time to withdraw any discount from such prices and/or to revise prices to take into account increases in costs including (without limitation) costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax duty or other levy and any variation in exchange rates.
- B) Unless otherwise specified VAT and any other tax or duties payable by the Customer shall be added to the price.
- C) The prices specified on the Company's Order Acknowledgement form are unless otherwise specified for delivery of the goods ex-factory.

### 4) Terms of Payment

Subject (where appropriate) to Condition 8:

- A) Payment for the goods shall unless otherwise agreed in writing be made in full without any deduction or set-off on the Customer's order for the goods.
- B) If credit terms are agreed with the Customer payment for the goods shall be made in full without deduction or set-off within 30 days of the date of invoice (or within such other credit period as may be agreed in writing by the Company).
- C) Any extension of credit allowed to the Customer may be charged or withdrawn at any time.
- D) Interest shall be payable on overdue accounts at the rate of 2% per month to run from the due date for payment thereof until receipt by the Company of the full amount whether or not after judgement.

- E) If in the opinion of the Company the credit-worthiness of the Customer shall have deteriorated prior to delivery the Company may require full or partial payment of the price prior to delivery or the provision of security for payment by the Customer in a form acceptable to the Company.

### 5) Delivery

- A) Delivery dates mentioned in any quotation purchase order, Order Acknowledgement form or elsewhere are approximate only and not of any contractual effect and the Company shall not be under any liability to the Customer in respect of any failure to deliver on any particular date or dates.
- B) Delivery shall be ex-factory unless otherwise stipulated or agreed by the Company. The Company will charge for delivery other than ex-factory.
- C) If the customer refuses or fails to take delivery of goods tendered in accordance with the contract the Company shall be entitled to immediate payment in full for the goods so tendered. The Company shall be entitled to store at the risk of the Customer any goods of which the Customer refuses or fails to take delivery and the Customer shall in addition to the purchase price pay all costs of such storage and any additional costs incurred as a result of such refusal or failure. Notwithstanding any copyrights, trademarks, patents and/or other intellectual property rights which the Customer may own in the goods, the packaging of the goods and/or any relevant specifications or drawings, the Company shall be entitled after the expiration of 14 days from the date upon which the price became payable to dispose of the goods in such manner as the Company may determine without account to the Customer therefore.
- D) Unless otherwise expressly agreed the Company may effect delivery in one or more instalments. Where delivery is effected by instalment each instalment shall be treated as a separate contract.

### 6) Risk

Subject (where appropriate) to Condition 8 risk shall pass on delivery.

### 7) Export Sales

In any case where goods are sold CIF or FOB or on the basis of another international trade term the meaning of such term contained in incoterms as revised from time to time shall apply except where inconsistent with any of the provisions contained in these Conditions.

### 8) Payment by Letter of Credit

- A) Unless otherwise agreed the price of the goods for Export Sales and in respect of certain UK sales (when specifically requested by the Company) shall be secured by an irrevocable letter of credit satisfactory to the Company established by the Customer in favour of the Company immediately upon receipt of the Company's acceptance of order and confirmed by a United Kingdom bank

acceptable to the Company. The letter of credit shall be for the contract price inclusive of any tax or duty payable by the Customer and shall be valid for at least 6 months or such longer period as shall have been estimated by the Company for delivery. The Customer undertakes to ensure that in the event that there is any delay in the estimated delivery dates due to circumstances beyond the Company's control the date of expiry of the letter of credit shall be extended by the Customer to the revised delivery date. The Customer shall increase the letter of credit to accommodate any increase in the contract price pursuant to these Conditions. The Company shall be entitled to payment on presentation to such United Kingdom Bank of the documents specified by the Company or as herein stipulated.

- B) Should the Customer fail when requested by the Company and within the time specified by the Company to take any action necessary on its part for delivery and/or shipment of the goods then:
- The Company shall be entitled by way of delivery to store the goods in a warehouse at the expense and risk of the Customer.
  - The price shall become immediately payable.
  - If payment is secured by letter of credit the Company shall be entitled to payment on presentation of the copy sales invoice and the warehouse receipt, and
  - Notwithstanding any copyrights, trademarks, patents and/or other intellectual property rights which the Customer may own in the goods the packaging of the goods and/or any relevant specifications or drawings, the Company shall have the right after the expiration of 1 month from the date upon which the price became payable to dispose of the goods in such manner as the Company may determine without accounting to the Customer therefore.
- C) Section 32(2) of the Sale of Goods Act 1979 shall not apply. The Company shall not be required to give the Customer the notice specified in Section 32(2) of that Act.

## 9) Title

All goods are supplied to the Customer by the Company on the following terms:

- The goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Customer shall have paid to the Company the agreed price for the goods together with the full price of any other goods the subject of any other contract with the Company.
- Until such payment the Customer shall be in possession of the goods solely as bailee for the Company and in a fiduciary capacity and until such time as the full price thereof together with the full price of any other goods the subject of any other contract with the Company is paid to the Company shall store the goods in such a way as to enable them to be identified as the property of the company.

- The Company reserved the immediate right of re-possession of any goods to which it has retained title as aforesaid and thereafter notwithstanding any copyrights, trademarks, patent and/or other intellectual property rights which the Customer may own in the goods the packaging of the goods and/or in any relevant specifications or drawings, to re-sell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company's servants and agents to enter upon all or any of its premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights of the Company there under or otherwise.
- The Customer shall be at liberty and may in the ordinary course of its business sell and deliver the goods to any third party as the Company's bailee and in a fiduciary capacity on the condition that it shall when requested by the Company immediately open a separate bank account and ensure that until payment of the goods as aforesaid the entire proceeds of any such sale are held in trust for the Company in such bank account and are not mingled with any other monies and shall at all times be identifiable as the Company's monies. The Customer agrees immediately upon being so requested by the Company to assign to the Company all rights and claims which the Customer may have against its customers arising from such sales until payment is made in full as aforesaid.

## 10) Third Party Rights

- A) The Customer shall indemnify the Company against any and all liabilities, claims and costs incurred by or made against the Company as a direct or indirect result of the carrying out of any work required to be done on or to the goods in accordance with the requirements or specifications of the Customer involving any infringement or alleged infringement of any rights of any third party.
- B) The Company shall have no liability to the Customer in the event of goods infringing or being alleged to infringe the rights of any third party. In the event that the goods are or may be the subject of third party rights the Company shall be obliged to transfer to the Customer only such title as the Company may have.
- C) The Customer shall notify the Company forthwith of any claim made or action brought or threatened alleging infringement of the rights of any third party. The Company shall have control over and shall conduct any such proceedings in such manner as it shall determine. The Customer shall provide all such reasonable assistance in connection therewith as the Company may request. The cost of any such proceedings shall be borne in such proportions as the parties shall determine.

## 11) Specifications and Information

- A) Unless expressly agreed in writing by the Company all drawings, designs, specifications and particulars of weights and dimensions submitted by the Company are approximate only and the Company shall have no liability in respect of any deviation there from. The Company accepts no responsibility for any errors omissions or other defects in any drawings, designs or specifications not prepared by the Company and the Company shall be indemnified by the Customer against any and all liabilities and expenses incurred by the Company arising there from.
- B) All drawings, designs, specifications and particulars submitted to the Customer shall remain the property of the Company and shall be immediately returned to the Company at its request.
- C) All drawings, designs, specifications and information submitted by the Company are confidential and shall not be disclosed to any third party without the Company's written consent.
- D) All those drawings, designs, specifications and information submitted by the customer and controlling the manufacture of the goods are set out in the Company's Order Acknowledgement form. If the Company or the Customer is required to make any variation to any document specified in the Company's Order Acknowledgement form the Company shall have the immediate right to increase the prices of the goods to cover any additional costs incurred by the Company as a result of such variation and to revise any agreed delivery dates for the goods.

## 12) Testing of the Goods

The Customer accepts responsibility for the testing of the goods prior to their incorporation into any other goods of the Customer or a third party and prior to any disposal or use of the goods by the Customer.

## 13) Liability

The Company shall not be liable to the Customer:

- for shortages in quantity delivered unless the Customer notifies the Company of any claim for short delivery within 14 days of receipt of the goods.
- for damage to or loss of the goods or any part thereof in transit (where the goods are carried by the Company's own transport or by a carrier on behalf of the Company) unless the Customer shall notify the Company of any such claim within 14 days of receipt of the goods or the scheduled date of delivery whichever shall be the earlier.

- for defects in the goods caused by fair wear and tear, abnormal conditions of storage or use or any act, neglect or default of the Customer or of any third party.
- for defects in the goods arising from faulty designs and materials supplied by the Customer.
- for other defects in the goods arising from faulty workmanship, designs and materials unless notified to the Company within 7 days of receipt of the goods by the Customer or where the defect would not be apparent on reasonable inspection within 1 month of delivery.

B)

- Where liability is accepted by the Company under paragraph (A) the Company's only obligation shall be at its option to make good any shortage or non-delivery and/or as appropriate to replace or repair any goods found to be damaged or defective on the condition that any such defective goods are returned to the Company for replacement or repair.
- The Company's aggregate liability to the Customer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the defective, damaged or undelivered goods which give rise to such liability as determined by net price invoiced to the Customer in respect of any occurrence or series of occurrences.

- C) Subject to the foregoing all conditions, warranties and representations expressed or implied by statute common law or otherwise in relation to the goods are hereby excluded and the Company shall be under no liability to the Customer for any loss, damage or injury direct or indirect resulting from defective material, faulty workmanship or otherwise howsoever arising and whether or not caused by negligence of the Company its employees or agents SAVE THAT the Company shall accept liability for death or personal injury caused by the negligence of the Company.

- D) The Company's prices are determined on the basis of the limits of liability set out in this Condition. The Customer may by written notice to the Company request the Company to agree a higher limit of liability provided insurance cover can be obtained therefore. The Company shall effect insurance up to such limit and the Customer shall pay upon demand the amount of any and all premiums. The Customer shall disclose such information as the insurers shall require. In no case shall the Customer be entitled to recover from the Company more than the amount received from the insurers.

## 14) Customer's Materials

- A) Where the Customer provides the Company with materials and/or goods on which to work or for the manufacture of the goods the Customer shall deliver to the Company's premises (as notified to the Customer) all such materials and/or goods not less than ten (10) days before the date of manufacture of the goods as notified by the Company to the Customer. If the Customer fails to deliver all the materials and/or goods to the Company's premises on the agreed date(s) the Company shall have the immediate right to increase the prices of the goods to cover any additional costs incurred by the Company as a result of the Customer's delayed delivery and to revise any agreed delivery dates for the goods.
- B) The Company shall accept liability for such materials and/or goods only as bailee and such liability shall be limited to the actual manufacturing cost of such materials and/or goods to the Customer. In particular the Company shall not be liable for consequential loss in respect of any loss or damage occurring to such materials and/or goods.
- C) Carriage of such materials and/or goods to the Company's premises or as ordered by the Customer shall be at the Customer's expense and risk.
- D) The Company shall have a general lien on any such materials and/or goods for any amounts due and owing to the Company and the Company may after seven (7) days notice sell such materials and/or goods in order to recover any amounts due and owing. The Company shall account to the Customer for any balance of the proceeds of sale of such materials which is outstanding after the deduction of all amounts owing to the Company and the expenses of the sale.

## 15) Packaging

- A) No additional charge shall be made for standard UK destination wrapping and packing.
- B) The customer shall meet the cost of any special packaging requested by the Customer or packaging rendered necessary by delivery by any means other than the Company's normal means of delivery.
- C) The Company shall be entitled to invoice the Customer for the cost of all pallets and other returnable packaging materials unless the same are returned to the Company in good condition carriage paid within 30 days of the date of delivery.

## 16) Licences and Consents

If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the goods by the Customer the Customer shall obtain the same at its own expense and if necessary produce evidence of the same to the Company on demand. Failure so to do shall not entitle the Customer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Company resulting from such failure shall be for the Customer's account.

## 17) Force Majeure

- A) The Company shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the supply of goods by the Company being prevented hindered delayed or rendered uneconomic by reason of circumstances or events beyond the Company's reasonable control including but not limited to Act of God war, riot, increased expense in obtaining workmen materials or transport or other circumstances affecting the supply of the goods or of raw materials therefore by the Company's normal source of supply or the manufacture of the goods by the Company's normal means or the delivery of the goods by the Company's normal route or means of delivery.
- B) If due to such circumstances or events the Company has insufficient stocks to meet all its commitments the Company may apportion available stocks between its customers at its sole discretion.

## 18) Insolvency and Default

- A) If the Customer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or if (being a company) an order is made or a resolution is passed for the winding up of the Customer (otherwise than for the purposes of amalgamation or reconstruction previously approved in writing by the Company) or if a receiver is appointed of any of the Customer's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding up order or if the Customer takes or suffers any similar or analogous action in consequence of debt or commits any breach of this or any other contract between the Company and the Customer the Company may without prejudice to any of its other rights stop any goods in transit and/or suspend further deliveries and/or determine the rights of the Customer under Condition 9 and/or by notice in writing to the Customer determine the contract.
- B) All amounts owing hereunder to the Company shall in the event of insolvency or default as specified in paragraph (A) become immediately due.

## 19) Consequences of Termination

- A) Notwithstanding any copyrights, trademarks, patents and/or other intellectual property rights which the Customer may own in the goods the packaging of the goods and/or in any relevant specifications or drawings the Company shall on the termination of the contract (howsoever caused) have the right (without prejudice to any of its other accrued rights on termination) to:
  - offer to the Customer all such stocks of the goods as the Company may at the date of termination have in store or under its control and payment for such goods shall be on delivery.

- complete the manufacture and to subsequently offer to the Customer any such goods which the Company was in the process of manufacturing at the date of termination and payment for such goods shall be on delivery.

B) If the Customer refuses or fails to take delivery of any goods offered to it under paragraph (A) within seven (7) days of the date of the Company's offer the Company shall have the right to dispose of such goods as it may determine without accounting to the Customer therefore.

#### **20) Waiver**

Failure by the Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

#### **21) Notices**

Any notice hereunder shall be deemed to have been duly given if sent by prepaid first class post, telex or telegraph to the party concerned at its last known address. Notices sent by first class post shall be deemed to have been given seven days after despatch and notices sent by telex or telegraph shall be deemed to have been given on the date of despatch.

#### **22) Governing Law**

The contract shall be governed by and construed in accordance with the Laws of England and the parties hereby submit to the jurisdiction of the English Courts.

