



Terms and Conditions v1 2019

1. **DEFINITIONS & GENERAL:** In these Terms and Conditions of Sale all references to “the Seller” means Energy Monkey Ltd. All references to “the Buyer” are to the person, firm or company to whom the Seller sells goods and services. All references to “Goods” are to the goods and services, which are the subject of the Order. “Conditions” means the terms and conditions of sale as set out in this document and any special terms and conditions agreed in writing by the Seller.

Unless otherwise expressly agreed in writing these Conditions form the basis of the contract relating to the supply of Goods sold by the Seller and purchased by the Buyer. The supply of Goods will be subject to these Conditions to the exclusion of all other such terms and conditions which the Buyer may purport to apply under any purchase order or any other document. All orders shall be deemed to be an offer by the Buyer to purchase Goods from the Seller pursuant to these Conditions.

2. **ORDERS & QUOTATIONS:** The Seller may accept an order for Goods at its complete discretion. All orders for Goods shall be deemed to be an offer by the Buyer to purchase from the Seller pursuant to these Conditions. Quotations are firm for thirty (30) days from offer date and represent no obligation until the Seller accepts the Buyers order. Clerical errors are subject to correction. No additional or different terms in the Buyer's purchase order or other communication shall constitute a part of the quotation unless expressly agreed to in writing by the Seller and no provision of the quotation may be changed or waived in any respect except in writing by an authorized representative of the Seller. In no event shall any failure of the Seller to object to any additional or different provision in the Buyer's purchase order or elsewhere be deemed an acceptance of such provision or a waiver of any provision of the quotation.

Buyer agrees that if the Buyer changes the quantity of Goods to be released for shipment then the Seller has the right to increase or decrease the price for the quantity of Goods shipped to the Buyer.

3. **PRICE & INVOICING:** Price is effective at time of shipment. The Goods will be invoiced at the price agreed or in the absence of any agreement of the price in a valid quotation or the current Seller price list. However, if a price increase becomes effective after the date of order, it will not apply to items shipped within thirty (30) days from the effective date of the price increase. Sale prices apply only if the total quantity on the purchase order is released within twelve (12) months for shipments scheduled not more than fifteen (15) months from the date or order.

4. **TAXES:** The price quoted is exclusive of any present or future VAT (and/or any other similar tax or duty) which shall be due from and payable by the Buyer at the rate due on the date of the Sellers invoice. These taxes shall be paid by the Buyer, or the Buyer shall provide the Seller with a tax exemption certificate acceptable to the taxing authorities.

5. **PAYMENT:** The Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after the delivery of the Goods. If the Goods are to be collected by the Buyer or the Buyer fails to take delivery of the goods 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. Unless otherwise agreed in writing all invoices on credit accounts shall be payable by the Buyer in full within 30 days of the date of Seller invoice. Buyers without credit accounts shall pay the Seller the full invoice amount either by ‘cash with order’ or ‘Proforma’. The Seller reserves the right to charge the Buyer interest on overdue invoices from the date when payment becomes due, calculated on a daily basis, until the date of payment at the rate of

2% per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgment. The Seller reserves the right at any time to change the amount of or to withdraw any credit extended to Buyer. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. The Buyer shall be liable for all collection costs (including solicitor's fees) incurred by the Seller, in connection with past due payments.

6. DELIVERY: Unless expressly agreed by the Seller in writing, any delivery dates quoted are approximate only, and time of the essence shall not apply to these conditions. Deliveries shall be made to the Buyers premises, carrier or agent and shall constitute delivery thereof to the Buyer and thereafter shall be at the Buyers risk. Any claim for delivery discrepancy must be notified to the Seller within 3 working days of the date of delivery. Any claims for transit damage must be notified to the Seller within 24 hours of receipt of the Goods. Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyers acceptance of these Conditions. Partial deliveries shall be permitted. All shipping charges and expenses shall be paid by Buyer.

7. RISK: The risk of loss or damage to the Goods passes to the Buyer at the earlier of the Seller giving notice to the Buyer that that the Goods are ready for delivery or delivery of the Goods to the Buyer or the Buyers carrier.

8. TITLE: The Goods shall remain the property of the Seller as legal and equitable owner and no property in or title to the Goods shall pass to the Buyer until their full price has been paid to the Seller. The Buyer grants the Seller an unrestricted license to enter the Buyers premises or other premises to which the Buyer has lawful access, for the purpose of re-taking possession and removing Goods for which the price has not been paid in full.

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9. FORCE MAJEURE: The Seller shall not be liable to the Buyer or be deemed to be in breach of contract in respect of failure to deliver or perform or delay in delivering or performing any obligations under the contract due to any cause beyond its reasonable control. These causes include but are not limited to an act of God, fire, floods, war and civil disturbances, acts of Buyer, acts of any governmental authority, strikes or other labour disturbances, delays in transportation, fuel or energy shortages, or inability to obtain necessary materials, parts or machinery, services, or facilities from usual sources.

10. HELD ORDERS: Any orders held by the Seller, delayed, or rescheduled at the request of the Buyer will be subject to the prices and conditions of sale in effect at the time of release of the holder or reschedule, plus any additional costs incurred due to the hold or reschedule. Any such order held, delayed, or rescheduled beyond a reasonable period of time will be treated as a Buyer termination.

11. SPECIAL DOMESTIC OR EXPORT PACKING: Prices include Goods having standard domestic packing only. Where special domestic packing or packing for overseas shipment is required, the Buyer shall contact the Seller.

12. DESCRIPTION OF GOODS: All descriptive and forwarding specifications, drawings, particulars of dimensions and weights given to the Buyer or contained in any of the Sellers price lists or advertising media are intended for information purposes only and may not be exact. Any performance figures provided by the Seller are based on test results only. Unless specifically agreed in writing the Seller accepts no liability if those figures are not attained by the Buyer. The Seller accepts no responsibility for the capacity, performance or length of life of the goods and for the suitability for the Buyers purpose. All decisions in respect to suitability of use or uses of the Goods are the responsibility of the Buyer.

13. EXPERIMENTAL SALES: In the event the Goods or any portion thereof furnished to the Buyer are identified as "prototypes", "samples", "for approval", "on consignment", "for evaluation", or in similar terms, the Buyer agrees that such material or information is confidential and that it will be liable for any disclosure of such material or information other than to employees required for evaluation by the Buyer.

14. WARRANTIES AND REMEDIES: The Seller shall not be liable to the Buyer in respect of any Goods supplied by the Seller which are not manufactured by it. The Seller may, so far as it reasonably can, transfer or assign to the Buyer the benefit of any manufacturer's warranties given to the Seller. The Seller warrants to the Buyer that its Goods shall be free from defects in material and workmanship and shall conform to the agreed upon specification, for a period of twelve (12) months from the date of invoice of the Goods. Provided, however, that as a condition of these warranties the Goods shall have been stored, installed, operated and maintained in accordance with recommendations and applied in accordance with standard industry practice. Goods which are "engineering samples", are sold "as is", "with all faults", and with no warranty whatsoever.

Should Goods sold hereunder fail to meet the above applicable warranty, the Seller, at its option, shall repair or replace such Goods or issue the Buyer with a credit or a refund for the amount of the purchase price provided that: (i) the Seller is notified in writing by the Buyer within 30 days after discovery of such failure, the Buyer is to obtain an RMA from the Seller to return one (1) part for test and examination to establish the reason for the failure of the Goods. At which time the Seller will determine whether the balance of the batteries may be returned using at RMA, or not: (ii) the Buyer obtains a return material authorisation from the Seller prior to returning any defective Products:

(iii) the defective Products are returned to the location specified by Energy Monkey Ltd:
(iv) the defective Goods are received by the Seller no later than four (4) weeks following the last day of the warranty period; and (v) examination of such Goods by the Seller shall disclose that such failures have not been caused by improper installation, application, repair, alteration, accident or negligence.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

The foregoing remedies set forth above are the Buyers exclusive remedies for claims (except to title) based on defects in or failure of any Goods whether a claim is based in contract, tort (including negligence and strict liability), and warranty or otherwise and however instituted. All liability under the warranty provisions ceases at the expiration of the warranty period. The above warranties shall apply only to the Buyer and shall not apply to Buyer's customers or any other third parties.

15. GENERAL LIMITATIONS OF LIABILITY: a) In no event, whether as a result of claims in contract, warranty, tort (including negligence and strict liability), or otherwise, shall the Seller be liable for loss of profit or revenues, loss of goodwill, claims of customers, loss of use, damages to or loss of other property or equipment, INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER.

The remedies of the Buyer set forth herein as to defective or nonconforming Goods are exclusive. The total cumulative liability of the Seller with respect to these conditions or anything done in connection therewith such as the performance or breach thereof or from the manufacture, sale, delivery, resale, or use of any Goods whether for claims in contract, tort (including negligence and strict liability), or otherwise shall in no case exceed the price of the specific order to which the claim relates.

16. INDEMNITIES: The Buyer shall defend and indemnify the Seller from all liabilities and costs resulting from any suit or proceeding based upon a claim that Goods infringe upon the right of a third party to the extent such claim arises from the Sellers' compliance with the Buyer's designs, specifications or instructions.

Goods purchased from the Seller are not to be used in critical safety systems (including without limitation life support equipment and devices used for implementation into the body), any such activity or process involving nuclear fission or fusion, or in any other manner not considered a standard and ordinary commercial use. Buyer agrees not to use or sell or transfer the product to others for such purposes, without prior written authorisation from the Seller. If any such use occurs, the Seller disclaims all liability and will in no event have any liability to the Buyer or any third party for personal injury, death or property or other economic damage suffered. The Buyer agrees to defend and indemnify the Seller against any and all costs, damage or expense arising out of or related to such liability. As used herein, "liability: means liability of any kind at any time whether in contract, tort (including negligence and strict liability), warranty or otherwise.

17. PATENTS: The Seller shall have no liability to the Buyer if any patent infringement or claim is based upon (i) a modification of the Goods not approved by the Seller or (ii) the interconnection or use of the Goods in combination with other products or devices not made by the Seller, or (iii) the use of Goods in other than an application recommended by the Seller. This states the Sellers sole liability for infringement of patents by the Goods it supplies.

18. CANCELLATION: All requests for cancellation of orders, changing a delivery schedule, or placing an order on hold must be made to the Seller in writing. The Seller may, at its discretion and in writing, allow an order to be cancelled subject to the Seller recovering from the Buyer any costs it has incurred. Custom battery assemblies or non-standard products cancelled less than 30 days from the scheduled shipping date will incur 100% cancellation charges. The Buyer agrees to pay all cancellation charges that are included in the cancellation of the order.

19. RETURNS: The Buyer may return Goods to the Seller and receive a credit or refund only if the correct procedure is adhered to. The Buyer must contact the Seller prior to the return of any Goods to obtain the goods returns number (GRN) which must be quoted on all returned paperwork. Returns must be made within 30 days of the date of delivery and must be in their original condition and packaging, which will enable the Goods to be fit for re-sale. The Buyer must return the Goods adequately packed and dispatched carriage prepaid. Goods returned due to Buyer error or no longer required will be subject to a handling charge which will be quoted at the time. The Buyer accepts no responsibility for any loss of or damage to Goods in transit from the Buyer or for any items received by the Seller with them.

20. MISCELLANEOUS: If an order is placed in the hands of an attorney for collection or if suit is brought to collect any of the account balance or interest thereon, the Buyer agrees to pay reasonable attorney fees and legal costs incurred. The invalidity, in whole or in part, of any provision herein shall not affect validity of any other provision herein. Any representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on the Seller. No modification, amendment, rescission, waiver or other change in these terms and conditions shall be binding on the Seller unless agreed to in writing by its authorized representative.

21: ENGLISH LAW: The formation, construction and performance of all contracts for the sales of Goods by the Seller to the Buyer shall be governed in all respects by English Law. The Buyer and the Seller hereby agree to submit to the jurisdiction of the English Courts.

22: HEALTH & SAFETY: The Buyer agrees only to use the Goods for uses specified in the Manufacturers current sales literature or for other uses which the Seller has specifically notified in writing to the Buyer as being in the Sellers opinion free from risk to health and safety.

The Buyer agrees to pay regard to any information or advice relating to the use of Goods which the Seller may at any time furnish to it and agrees that before the goods are used it will if requested by the Seller furnish the Seller with a written undertaking to take steps which the Seller may specify with a view to ensuring that the Goods will be safe and without risk to health when used. Any written undertaking given pursuant to the above shall be deemed to have effect as if it formed part of the contract of sale of goods.