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RedFlow

ZBM Product Range Terms and
Conditions of Sale
April 2015



Terms and Conditions of Sale

1. These Conditions shall apply to this sale unless separately agreed conditions have been negotiated for sales under a separate Agreement.
2. The Supplier shall deliver the goods described in this sale (Products Sold) to the Purchaser at the time for delivery and at the place for delivery stated in this sale. Where a program is attached to the order for this sale, the program providing for deliveries of the Products Sold on separate dates; the Supplier shall deliver the Products Sold on those dates. The Supplier shall take all reasonable steps to prevent and minimise delay. But, the Supplier will not be liable for any loss incurred as a result of delays caused by any reason whatsoever. The Supplier will not be liable for any damage, expense or loss incurred by the Purchaser as a result of delay or failure to make any supply of any Products Sold or to observe any of these conditions of purchase due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.
3. Risk of loss or damage to the Products Sold shall pass to the Purchaser upon delivery.
4. Provided that the Products Sold are operated by the Purchaser in accordance with the Installation and Operation Manual (Manual) and any other written product directions and guidelines that may be published from time to time, the Supplier warrants for 12 months from Sale date that the Products Sold will conform, in all respects with all requirements of published RedFlow specifications as contained in the warranty provisions and the Manual(Defects Liability Period). These details are freely available from www.redflow.com.
5. Subject to paragraph 6, and unless otherwise stated in any specification or special conditions attached to this order, a manufacturing defects liability period of 6 months for a Products Sold will commence on delivery of the Products Sold. At any time prior to the expiration of the manufacturing defects liability period, the Purchaser may direct the Supplier to rectify any defect in the Products Sold having a material impact on its operation which is notified to the Purchaser in writing prior to the expiration of the defects liability period. A separate defects liability period of the same duration as the defects liability period shall apply to the rectification work.

6. The manufacturing Defects Liability Period will not apply if (a) the Purchaser has not paid the purchase price for the Products Sold in full without set off counterclaim or deduction; (b) the Products Sold were altered, tampered with or misused in any way or improperly installed or connected; (c) the defect in the Products Sold was attributable to damage howsoever caused after delivery to the Purchaser; (d) the serial number on the Products Sold has been removed, defaced or changed or (e) the Manual has not been adhered to in any way; (f) in the event of a claim operational logs of the Products Sold are to be provided to the Supplier

7. Prices stated in the purchase order are not subject to adjustments for the rise and fall in costs unless otherwise agreed in writing between the Purchaser and the Supplier. All prices are in USD unless stated otherwise.

8. The Supplier will invoice the Purchaser for each delivery. The Purchaser shall pay the Supplier on following terms (a) 50% on order and (b) 50% prior to delivery, unless otherwise agreed.

9. The Purchaser agrees that until all monies owing by the Purchaser to Supplier are paid in full for the Products Sold, legal and equitable title to the Products Sold is retained by Supplier. Until then, the Purchaser is a bailee of the Products Sold. The Purchaser (a) holds the Products Sold as bailee and fiduciary agent of Supplier; and (b) must keep it in its possession and control, in good repair and condition, excluding fair wear and tear and stored separately and marked so that the Products Sold are clearly and easily identifiable as Supplier's property and inform Supplier of the location of the Products Sold, if requested.

10. Notwithstanding any other provision to the contrary, Supplier reserves the following rights in relation to the Products Sold until all amounts owed by the Purchaser to Supplier in respect of the Products Sold and all other goods and services supplied to the Purchaser by Supplier at any time are fully paid (a) legal and equitable ownership of the Products Sold (b) to retake possession of the Products Sold and (c) to keep or resell any of the Products Sold repossessed.

11. In the event of a breach of this contract by the Purchaser including, without limitation, failure by the Purchaser to make payment for the Products Sold by the date specified by Supplier to the Purchaser, the Purchaser must return the Products Sold to Supplier immediately on demand. If the Purchaser does not return the Products Sold to Supplier on demand, Supplier is

entitled (without further notice) to enter upon the Purchaser's premises at any time to do all things necessary to recover the Products Sold. The Purchaser hereby grants full leave and irrevocable licence to Supplier and any person authorised by Supplier to enter upon any premises of the Purchaser where the Products Sold is stored for the purpose of retaking possession of the Products Sold.

12. The Purchaser agrees that (a) it will be liable for all costs, damages, expenses or any other sums of money incurred or suffered by Supplier (whether direct or indirect) as a result of Supplier retaking possession of the Products Sold or otherwise exercising its rights under this clause; and (b) it will indemnify Supplier for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against Supplier in connection with retaking possession of the Products Sold or the exercise by Supplier of its rights under this clause, and the Purchaser must repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

13. These conditions of purchase set out the entire agreement between the parties in relation to their subject matter. The terms of the United Nations Convention on Contracts for the International Sale of Goods, 1980 (the Vienna Convention) and all other terms or conditions in relation to the subject matter of these Conditions, whether implied by use, statute or otherwise, are expressly excluded.

14. No statement or recommendation made or advice, supervision or assistance given by Supplier, its employees, agents, transport contractors or representatives whether oral or written must be construed as or constitutes a warranty or representation by the Supplier or a waiver of any clause in these conditions. The Supplier is not liable for loss or damage arising directly or indirectly from any act or omission to act arising directly or indirectly from any such statements, recommendations, advice, supervision or assistance.

15. Subject to this paragraph, Supplier is not liable for any loss or damage, however caused (including, but not limited to, by the negligence of Supplier), suffered by the Purchaser in connection with a supply of the Products Sold under these Conditions of Sale. If the Trade Practices Act 1974 (TPA) or any other legislation implies a condition or warranty into these Conditions of Sale in respect of the Products Sold, and Supplier's liability for breach of that condition or warranty may not be

excluded but may be limited, clause 15 does not apply to that liability and instead Supplier's liability for any breach of that condition or warranty is limited to Supplier doing any one or more of the following (at its election) (a) replacing the Products Sold or supplying equivalent goods; (b) repairing the Products Sold; (c) paying the cost of replacing the Products Sold or of acquiring equivalent goods; (d) paying the cost of having the Products Sold repaired.

16. Notwithstanding any other provision of these Conditions, Supplier is not liable to the Purchaser for any indirect or direct loss or damage suffered or incurred by the Purchaser arising out of a breach by the Purchaser of a contract made pursuant to these Conditions or a negligent act or omission of Supplier or a breach of a statutory duty or obligation by Supplier. The Supplier's total maximum liability in connection with the supply and sale of the Products Sold is the purchase price paid for those goods.

17. The Supplier shall not be liable upon any claim by the Purchaser in respect of any matter arising of this order unless the claim together with full particulars thereof is lodged in writing with the Supplier not later than twenty-one days after the occurrence of the events or circumstances on which the claim is based.

18. If a claim is made by a third party in good faith and on reasonable grounds that the sale and supply of the Products Sold infringes the intellectual property rights of that third party, the obligation of the Supplier to supply and sell any undelivered goods and the obligation of the Purchaser to purchase any undelivered goods is suspended until the third party claim is finally judicially determined by a Court of competent jurisdiction. If the claim is dismissed to the reasonable satisfaction of the Purchaser, the suspension ends. If the claim is upheld, either party may terminate this contract. For the avoidance of doubt, such a claim does not suspend any obligation of the Purchaser to pay the balance purchase price of any Products Sold which have been delivered to the Purchaser before the time the claim is made.

19. All disputes arising in connection with the sale of the Products Sold must be finally settled under the Arbitration Rules of the Australian Centre for International Commercial Arbitration with 3 arbitrators appointed in accordance with the rules. The place of arbitration will be in Brisbane, Australia. The law applicable to the merits of the dispute and the procedural law will be the law of the State of Queensland, Australia. The arbitrators are entitled to determine the procedure for the

arbitration. The language to be used in the proceedings must be English. The arbitrators have the right to award any relief that they deem proper under the circumstances to the extent the award of relief is not prohibited by this Agreement. The final determination of the arbitrators is final and binding on the parties except in the case of fraud or any breach by the arbitrators of the terms and conditions of their engagement. Unless otherwise determined by the arbitrators, the parties must pay the costs of the arbitrators in equal shares. All discussions and information supplied and other matters raised during the dispute resolution process under this clause will be confidential and without prejudice to any claim or proceeding subsequently made or brought by either party to the dispute or difference. No party to the dispute or difference may use any information or documents obtained through the dispute resolution process established under this clause for any purpose other than in an attempt to settle the dispute between the parties.

Notwithstanding the obligation to arbitrate disputes, each party reserves the right to seek injunctive relief from the courts of Queensland for a threatened or actual breach of this Agreement by the other party that would cause irreparable harm to such party.

20. Consequential damages are expressly excluded.

21. This agreement contains everything the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this agreement was executed, except as permitted by law. If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.



Off-Grid Remote
Power and Telcos



Renewable Energy
Integration



Transmission and
Distribution Deferral



Smart
Grid