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TERMS AND CONDITIONS OF SALE OF ENERGIST LIMITED (the "Company")

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

"Business Day":	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
"Comparable goods":	Goods which are, in the sole opinion of Energist, sufficiently similar to the Goods to be a satisfactory replacement.
"Conditions":	the terms and conditions set out in this document as amended from time to time in accordance with clause 1.2
"Confidential Information":	has the meaning given in clause 15
"Contract":	the contract between Energist and the Customer for the sale and supply of the Goods and/or the supply and performance of the service in accordance with these Conditions.
"Customer":	the person or firm who purchases the Goods from Energist.
"Energist":	Energist Limited incorporated and registered in England and Wales with company number 04838458 whose registered office is at Swansea Enterprise Park, Park Pavilions, Clos Llyn Cwm, Bon-y-maen, Swansea SA6 8QY.
"Exworks (EXW)":	Exworks from 2 Park Pavilions, Clos Llyn Cwm, Valley Way, Enterprise Park, Swansea, SA6 8QY, United Kingdom
"Force Majeure Event":	has the meaning given in clause 16.
"Goods":	the goods (or any part of them) set out in the Order.
"Incoterms":	The international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
"Intellectual Property Rights":	All patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, right in trade dress or get-up, rights in goodwill or sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
"Order":	Any written quotation of Energist which is accepted by the Customer or any written purchase order of the Customer which is accepted by Energist, or any applicable distribution agreement in place from time to time between Energist and the Customer, for the supply of Goods or performance of Services.

“Purchase Price”:	the price for the Goods set out in the Quotation.
“Quotation”:	Energist’s quotation in respect of the Goods, as set out overleaf or as agreed otherwise in writing as the case may be.
“Services”:	The services (if any) described in the Order
“Specification”:	Any plans, drawing, data process, products or other technical requirements or information agreed in writing by the parties.

1.2 **Construction.** In these Conditions, the following rules apply:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5 A reference to **writing or written** includes faxes and e-mails.

2. Basis of contract

- 2.1 Subject strictly to clause 2.11, these Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and, subject to any written agreement to the contrary, shall also apply to any future oral or written contract for the supply of Goods and/or services by Energist to the Customer.
- 2.2 The Order constitutes an offer from the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Order is only deemed accepted upon Energist accepting the order in writing, at which point the Contract shall come into existence.
- 2.3 The Quotation constitutes an offer by Energist to sell the Goods in accordance with these Conditions.
- 2.4 The Goods are described in the Quotation. All extras and accessories ordered, but not specified in the Quotation, will be charged separately, as will the costs of adjustments, alternations and other work undertaken at the Customer’ request.
- 2.5 Energist reserves the right to amend the Quotation if required by any applicable statutory or regulatory requirements.

- 2.6 The Quotation shall only be deemed to be accepted when the Customer issues a written acceptance of the Quotation and its contents and these terms and conditions, at which point the Contract shall come into existence.
- 2.7 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Energist which is not set out in the Contract.
- 2.8 The Quotation for the Goods given by Energist shall not constitute an offer and is only valid for a period of twenty (20) business days from its date of issue.
- 2.9 Any samples, drawings, descriptive matter or advertising issued by Energist and any descriptions of the Goods, illustrations or descriptions of the Services contained in Energist catalogues or brochures are published for the sole purpose of giving an approximate idea of the Services and /or Goods described in them. They shall not form part of the Contract.
- 2.10 All Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.11 In the event that any provision in these Conditions conflict with any provisions included within the Order (which for the avoidance of doubt includes any applicable Quotation, any applicable written purchase order of the Customer which is accepted by Energist or any applicable distribution agreement), the provisions within the Order shall prevail.
- 3. Goods and Services**
- 3.1 Where the Customer does not specify that the Goods or Services are to be used for a particular purpose, process or procedure, Energist will not be liable if the Goods or Services transpire to be unsuitable for that purpose, process or procedure.
- 3.2 The Customer shall be responsible to Energist for ensuring the accuracy of the terms of any Order (including any applicable Specification) submitted by the Customer, and for giving Energist any necessary information relating to the Goods and/or Services pursuant to clause 3.5 or otherwise within a reasonable time to enable Energist to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality, description, functionality, facilities, functions, capacity and description of the Goods and/or Services shall, subject as provided in these Conditions, be as specified in the Order and any applicable Specification as set out in any documents referred to in the Order.
- 3.4 Any Specification supplied by Energist to the Customer in connection with the Contract, together with all Intellectual Property Rights in the Specification, shall be the exclusive property of Energist. The Customer shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Customer, or as required for the purpose of the Contract. Upon request of Energist the Customer will return to Energist any documents (or other media) in or upon which any part of the Specification has been supplied by Energist and shall not retain copies thereof.
- 3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by Energist in accordance with a Specification submitted by the Customer, the Customer shall indemnify Energist against all liabilities, losses (including any direct, indirect or consequential losses), damages, costs and expenses (including all legal and other professional costs and expenses) awarded against, suffered by or incurred by Energist in connection with any claim for infringement of any Intellectual Property Rights of any other person which results from Energist's use of the Specification so submitted by the Customer.
- 3.6 Energist reserves the right to make any changes in the Specification of the Goods and/or Services which are required in order for the Goods and/ or Services to conform with any statutory or other regulatory requirements.
- 3.7 Energist will provide the Services at the Customer's premises and where the Customer has contracted with Energist to provide the Services at the premises of a third party, all references to the Customer's premises in the Contract shall be deemed to be references to the premises where the Services are to be provided
- 3.8 No Order which has been accepted by Energist may be cancelled by the Customer except with the agreement in writing of Energist and on terms that the Customer shall indemnify Energist in full against all loss, costs, damages, charges and expenses incurred by Energist as a result of cancellation.
- 3.9 No Order which has been accepted by Energist may be changed or altered by the Customer except with the agreement in writing of Energist, and payment by the Customer of a 10% surcharge (calculated as 10% of the Price) to Energist.
- 3.10 Energist shall provide the Services to the Customer in accordance with the Specification.

3.11 Energist shall use reasonable endeavours to meet any performance dates for the supply of Services or goods agreed in writing between the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of Services or for the supply of goods.

4. Price of the goods

4.1 The Price shall be the Energist quoted price. The Price quoted is valid for twenty (20) Business days only, after which time the Price may be altered by Energist without giving notice to the Customer.

4.2 Energist reserves the right, by giving notice to the Customer at any time before delivery, to increase the Price to reflect any increase in the cost to Energist which is due to any factor beyond the control of Energist, including but not limited to any change in delivery dates, quantities or the Specifications which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Energist adequate or accurate information or instructions.

4.3 Except as otherwise stated under the terms of the Order and unless otherwise agreed in writing between the Customer and Energist, the Price is given by Energist Exworks, and where Energist agrees to deliver the Goods otherwise than at Energist premises, the Customer shall be liable to pay Energist charges for transport, packaging and insurance

4.4 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

4.5 The Price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to Energist

4.6 Unless otherwise specified in the Order, the Customer shall pay the invoice in full and in cleared funds within 30 days of receipt of such invoice. Time of payment is of the essence. Payment shall be made according to the directions for payment set out in the Quotation

4.7 If the Customer fails to make any payment due to Energist under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above plus the Bank Of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

4.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Energist may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Energist to the Customer.

5. Delivery

5.1 Energist shall not be obliged to deliver the Goods unless, subject to any written agreement to the contrary between the parties, payment of the Purchase Price has already been made in accordance with clause 4.6.

5.2 Delivery, unless otherwise specifically stated in the Quotation, will be to such location as the parties may agree in writing, and by any method of transport chosen by Energist.

5.3 Any time or date for the dispatch or delivery of Goods or for the completion of work, whether specified in the Quotation or otherwise given by Energist in writing, shall be taken as an estimate made by Energist in good faith, but shall not be binding upon Energist, either as a term of the Contract or otherwise, and the time of delivery is not of the essence.

5.4 In no circumstances shall Energist be liable to the customer in consequence of failure to deliver within such time or by such date.

5.5 If Energist fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Energist shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Energist with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.6 If delivery of the Goods is delayed through any act or omission of the Customer, or if Energist fails to deliver the Goods as a result of any act or omission of the Customer, Energist may put the goods into storage at the Customer's risk and make a charge to the Customer equal to 2% per month or part thereof, of the invoice price of the Goods, until delivery is affected in accordance with this clause.

- 5.7 Energist may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.8 If Energist fails to deliver the Goods (or any instalment), the Customer must use its best endeavours to mitigate any potential loss. Where the Customer suffers a foreseeable loss as a result of Energist's failure to deliver, its liability shall be limited to the difference in price between the undelivered Goods and the price of the cheapest Comparable Goods on the market.
- 5.9 If the Customer fails to take delivery of the Goods within 30 (thirty) Business Days of Energist notifying Customer that the Goods are ready, or fails to give Energist adequate delivery instructions at the time stated for delivery (otherwise than by reason of any Force Majeure or by reason of a fault on the part of Energist) then, without prejudice to any other right or remedy available to Energist, Energist may:
- 5.9.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- 5.9.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses), account to the Customer for the excess over the Price or charge the Customer for any shortfall below the Price under the Contract.
- 5.10 Any charges quoted for delivery of the Goods, transport, packaging and insurance are approximate only and Energist shall not be liable for any changes to the charges quoted however caused.

6. Warranty

- 6.1 Subject to the provisions of clause 6, all drawings, particulars, weights, dimensions and other specifications submitted by Energist in respect of the Goods are approximate only, are intended only to give a general idea of the Goods, and shall not form part of the Contract.
- 6.2 Unless any performance figures, tolerance or other characteristics have been specifically warranted by Energist in writing, under this clause 6 or separately in the form of Energist's technical specifications or the Order, Energist shall have no liability to the Customer in respect of the Goods' failure to attain such performance figures, tolerance or other characteristics.
- 6.3 Subject to the other provisions of this clause 6, if:
- 6.3.1 any defects which under proper use appear in the goods within a maximum period of 24 months after delivery as stipulated by the order ("**Warranty Period**") and are due to faulty materials, workmanship or design (other than design provided or specified by the Customer); and
- 6.3.2 the Customer gives notice in writing to Energist during the Warranty Period and within a reasonable time of discovery that the Goods do not comply with the relevant warranty; and
- 6.3.3 Energist is given a reasonable opportunity of examining such Goods; and
- 6.3.4 the Customer (if asked to do so by the Supplier) returns such Goods to Energist's place of business; then Energist shall, at its option and subject always to clause 6, repair or replace the defective Goods.
- 6.4 Any repairs or adjustments carried out by the Customer in respect of the Goods not performed or authorised in advance by Energist shall cancel any warranty provided in this clause 6 or any separate technical specifications, and shall release Energist from further responsibility in respect of such Goods.
- 6.5 The cost of the carriage of the returned goods or parts shall be paid by the Customer and the repaired or replaced goods or parts will be delivered by Energist to the Customer free of charge.
- 6.6 Goods repaired or replaced under warranty shall be warranted for the remaining unexpired portion of the original warranty period applying to the original goods supplied.
- 6.7 Subject to clause 6.9, Energist's liability under this clause 6 shall be in lieu of any obligation implied by law as to the quality or fitness for any purpose of the goods and save as provided in this condition Energist shall be under no liability whether in contract, tort or otherwise, in respect of any defects in the goods or for any loss or damage resulting from such defects or from any work done in connection therewith.
- 6.8 In the case of goods not manufactured by Energist, the Customer is entitled only to the benefit of any guarantee or warranty given to Energist in respect thereof insofar as Energist is entitled to assign the same. In any event, Energist's liability shall not exceed the amount recovered by Energist from the manufacturer concerned.

- 6.9 Except as otherwise set out in this clause 6 **Energist hereby excludes to the fullest extent permissible in law**, all conditions, warranties and stipulations, express (other than those set out in the contract) or implied (including terms implied by sections 13 to 15 of the Sale of Goods Act 1979), statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 6.10 Save insofar as Energist's stipulations in respect of the Goods are based on advice given by Energist in writing, the responsibility for ensuring that Goods are sufficient and suitable for the Customer's purposes rests upon the Customer.
- 6.11 Unless supplied or approved, Energist undertakes no responsibility for sites or foundations or for any framework or support or machinery or for compliance with any local bye-laws or statutory regulations or the fulfilment of any special requirements the Customer is bound to observe.

7. Title and risk

- 7.1 Risk of damage to or loss of the Goods shall pass to the Customer:
- 7.1.1 in the case of Goods to be delivered at Energist premises, at the time when Energist notifies the Customer that the Goods are available for collection; or
- 7.1.2 in the case of Goods to be delivered otherwise than at Energist premises, at the time of delivery (in accordance with the appropriate Incoterms (2020) or, if the Customer wrongfully fails to take delivery of the Goods, the time when Energist has tendered delivery of the Goods.
- 7.1.3 Title to the Goods shall not pass to the Customer until Energist has received payment in full (in cash or cleared funds):
- 7.1.4 The Customer should keep the Goods insured against all risks for their full price on Energist's behalf from the date of delivery,
- 7.1.5 Until such time as title to the Goods passes to the Customer, Energist shall be entitled at any time to require the Customer to deliver up the Goods to Energist, providing that they have not been resold, or irrevocably incorporated into another product, and, if the Customer fails to do so forthwith, to enter any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 7.1.6 Customer should store them separately from all other goods held by the Customer and in such a way and place that they may at all times be clearly identifiable as Energist's property;
- 7.1.7 Customer should not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.1.8 Customer should give Energist such information relating to the Goods as Energist may require from time to time;
- 7.1.9 Customer should notify Energist immediately if it becomes subject to any of the events listed in clause 12;
- 7.2 The Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the title in the Goods passes to the Customer. However, if the Customer resells the Goods before that time, title to the Goods shall pass from Energist to the Customer immediately before the time at which resale by the Customer occurs.
- 7.3 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12 then, without limiting any other right or remedy Energist may have:
- 7.3.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 7.3.2 Energist may at any time:
- 5.1.1.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- 5.1.1.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. Cancellation

The Customer shall not be entitled to cancel the contract or any part thereof, nor to require delay in its performance without Energist's prior written consent, which will be given on terms which will indemnify Energist against any loss it may suffer.

9. Loss or damage in transit

- 9.1 Where Energist is responsible for delivery of the Goods, Energist will repair or, at its option, replace free of charge within a reasonable time, all Goods damaged or lost in transit, provided separate notices in writing are given to both the carrier and Energist within three days of receipt of the Goods. Where the Goods are accepted from the carrier without being checked the carrier's delivery book must be signed "NOT EXAMINED".
- 9.2 All Goods the subject of any claim for damage in transit or shortage in delivery shall, if appropriate, be preserved intact as delivered for a reasonable period and at least seven working days after making the claim, within which time Energist shall be at liberty to attend the Customer's premises and investigate the complaint. Within five days of receipt of the Goods (or if collected from Energist's premises, a period of 10 days from collection), the Customer shall send photographic or video evidence clearly showing any error codes displayed on the Goods to Energist. The Customer shall not dispose of any damaged Goods without Energist's agreement.
- 9.3 Compliance by the Customer with each and every requirement of this Contract shall be a condition precedent to any right the Customer has to make a claim and any breach shall release Energist from any liability or obligation in respect of the claim or to investigate it. The acceptance by Energist of any belated notice or claim, or any action taken by the Company thereon, shall not constitute any waiver by Energist and shall be without prejudice to Energist's right to reject the claim on the grounds of non-compliance with this contract.

10. Intellectual Property Indemnity

- 10.1 Notwithstanding any other term of these Conditions, all Intellectual Property Rights arising out of or in connection with the supply of Goods or Services pursuant to the terms of this Agreement shall be owned by Energist.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional upon Energist obtaining a written licence from the relevant licensor on such terms as will entitle Energist to licence such rights to the Customer.
- 10.3 All materials produced by Energist for the sales and marketing of Energist products are the exclusive property of Energist.

11. Customer Indemnity

The Customer shall indemnify Energist and keep it indemnified against all injury (including death) to any persons and all loss and/or damage as a result of any act, default or negligence by the Customer and its employees or agents (other than Energist or its sub-contractors) and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

12. Termination and Suspension

- 12.1 If the Customer becomes subject to any of the events listed at clause 12.2, Energist may terminate the Contract with immediate effect by giving written notice to the Customer, or in the case of any late payment on the part of the Customer, arrange for any credit arrangement agreed between the parties to be withdrawn (in Energist's sole discretion).
- 12.2 For the purposes of clause 12.1, the relevant events are:
- 12.2.1 If the Customer fails to pay any amount due under this Contract on the due date (or in the event of a delay in payment as a result of a banking or technical-based issue, fails to pay within 3 day);
- 12.2.2 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as

they fall due or admits inability to pay its debts, or (being an incorporated company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- 12.2.3 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 12.2.4 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 12.2.5 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 12.2.6 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 12.2.7 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 12.2.8 (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (a) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (b) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2 (inclusive);
 - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - (d) the Customer's financial position deteriorates to such an extent that in Energist's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - (e) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
- 12.2.9 the Customer fails to comply with any of the provisions of these conditions and (in the case of a failure capable of being remedied) does not rectify such non-compliance within 14 working days of the other party's written notice of it;
- 12.2.10 there is a change of control of the Customer within the meaning of section 1124 of the Corporation Tax Act 2010.
- 12.3 Without limiting its other rights or remedies, Energist may suspend provision of the Goods under the Contract or any other contract between the Customer and Energist if the Customer becomes subject to any of the events listed in clause 12.2 or Energist reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 12.4 On termination of the Contract for any reason the Customer shall immediately pay to Energist all of Energist's outstanding unpaid invoices and interest.
- 12.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 12.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13. Health and safety

- 13.1 The Customer shall be responsible for ensuring that all statutory, government or local regulations are complied with in relation to the operation of any Goods purchased from Energist.
- 13.2 Should any local regulations require amendments to the specification, the cost of any such amendments shall be charged to the account of the Customer in addition to the original contract price.
- 13.3 The Customer shall ensure that all instructions, handbooks, notices and warnings issued by Energist are properly understood and complied with at all times by all persons using the Goods or working within close proximity to them, the Customer being responsible for the translation of the English narrative supplied by Energist.
- 13.4 It is the Customer's responsibility to ensure that any adverse incidents involving or relating to the Goods are reported back to Energist in writing as soon as possible following any such incident taking place.

14. Limitation of liability

- 14.1 Nothing in these Conditions shall limit or exclude Energist's liability for:
 - 14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 14.1.2 fraud or fraudulent misrepresentation;
 - 14.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 14.1.4 defective products under the Consumer Protection Act 1987; or
 - 14.1.5 any matter in respect of which it would be unlawful for Energist to exclude or restrict liability.
- 14.2 Subject to clause 14.1, Energist shall be under no liability:
 - 14.2.1 in respect of any defects which appear under proper use of the Goods within a period of 12 months after delivery if the Customer fails to adhere strictly to the terms of payment provided for or referred to herein; or
 - 14.2.2 in respect of damage caused by an unsuitable environment; or
 - 14.2.3 in respect of any defects or damage caused by accident, misuse, mishandling, neglect, tampering with, or attempted repair of, the goods other than by an authorized agent of Energist; or
 - 14.2.4 in respect of the use of spare parts, accessories or consumables not approved by Energist; or
 - 14.2.5 where defective goods or parts thereof have not been dispatched to Energist within 14 days of notification of the defect to Energist at the expense of the Customer; or
 - 14.2.6 where the goods were sold as second-hand or reconditioned.
- 14.3 Subject to clause 14.1 and 14.2
 - 14.3.1 Energist shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 14.3.2 Energist's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Purchase Price.
- 14.4 This Clause 14 shall survive termination of the Contract.

15. Confidentiality

- 15.1 For the purposes of this clause, "Confidential Information" means any and all information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of Energist for the time being confidential to Energist and trade secrets including, without limitation, technical data and know-how relating to the business of Energist or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts, and including (but not limited to) information that the Customer creates, develops, receives or obtains in connection with the Contract, whether or not such information (if in anything other than oral form) is marked

confidential.

- 15.2 Except with Energist's prior written consent, the Customer shall not use (other than for the purposes of fulfilling the Contract) or disclose to any third party (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:
- 15.2.1 any use or disclosure authorised by Energist or required by law; or
 - 15.2.2 any information which is already in, or comes into, the public domain otherwise than through the Customer's unauthorised disclosure.
- 15.3 The Customer shall ensure that its employees enter into similar undertakings with the Customer and shall indemnify Energist against all losses, damage or expenses arising out of a breach of this clause 15.

16. Force majeure

- 16.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event, provided that the affected party notifies the other party of the Force Majeure Event as soon as reasonably practicable. The time for performance of such obligations shall be extended accordingly. A "Force Majeure Event" means, subject to clause 16.2, any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or that of a third party), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics (subject to clause 16.2) or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors, or any other similar extraordinary event which shall be deemed to be outside of the control of the parties.
- 16.2 An event arising as a result of the 2019 novel coronavirus disease (COVID-19) outbreak and pandemic shall not be considered a Force Majeure Event in the context of this Agreement and is excluded from this clause 16.
- 16.3 To the fullest extent permitted by law, the parties hereby agree that by entering into this Contract they waive any right claim that this contract has become frustrated as a result of COVID-19. For avoidance of doubt, this clause concerns COVID-19 only and any other pandemics may still fall under a force majeure event.

17. Assignment and other dealings

- 17.1 Energist may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Energist.

18. Notices

- 18.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- 18.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the party's registered office; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 18.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

19. Severance

- 19.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or

part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 19.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Waiver

- 20.1 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21. Third party rights

21.1 A person who is not a party to the Contract shall not have any rights to enforce its terms.

22. Variation

22.1 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is expressly accepted in writing by Energist's authorised signatory.

23. Governing law

23.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

24. Jurisdiction

24.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

25. Website & Cookies Privacy Policy

5.2 "Welcome to our website. If you continue to browse and use this website, you are agreeing to comply with and be bound by the following terms and conditions of use, which together with our privacy policy govern Energist Ltd's relationship with you in relation to this website. If you disagree with any part of these terms and conditions, please do not use our website."

5.3 The content of the pages of this website is for your general information and use only. It is subject to change without notice

5.4 The data we collect about you

We may collect, use, store and transfer different kinds of personal data about you as follows:

- Identity Data.
- Contact Data.
- Financial Data.
- Transaction Data.
- Technical Data.
- Profile Data.
- Usage Data.
- Marketing and Communications Data.

5.5 This web site uses cookies in a number of ways which are as follows:

i. Aggregated Site Usage Statistics

Cookies may be placed on your computer, phone or other Internet device to provide us with aggregated data of the usage of this site and the mediums which are driving traffic to the site. The data gathered by these is aggregated and therefore your individual usage of this site cannot be attributed to you.

ii. Essential Site Features

Cookies may be placed upon your computer, phone or other Internet device in order to provide essential site features such as allowing you to compare different products and complete enquiry forms quickly.

iii. Complementary Site Features

The site may also use cookies for certain complementary purposes such as showing you the product that you last

looked at on the homepage. All these functions are designed to improve your experience of using the site. If you don't want this site to place cookies on your device you can disable these using your Internet Browser settings.

5.6 How we use your personal data

We will only use your personal data for the purpose for which we collected it which include the following:

- To register you as a new customer.
- To process and deliver your order.
- To manage your relationship with us.
- To enable you to participate in a prize draw, competition or complete a survey.
- To improve our website, products/services, marketing or customer relationships.
- To recommend products or services which may be of interest to you.

5.7 Your legal rights

Under certain circumstances, you have rights under data protection laws in relation to your personal data including the right to receive a copy of the personal data we hold about you and the right to make a complaint at any time to the Information Commissioner's Office, the UK regulator for data protection issues (www.ico.org.uk).

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