

Terms and conditions (supply)

1. Interpretation

1.1. The definitions and rules of interpretation in this condition apply in these conditions.

Conditions: these terms and conditions as updated by UPS Power Services Ltd from time to time (such updates to be notified to the Customer in writing).

Contract: the contract between UPS Power Services Ltd and the Customer for the supply of Goods and/or Services in accordance with these Conditions and, where applicable, the Maintenance Contract and any extended warranty document applicable to any of the Goods.

Customer: the person or firm who purchases the Goods and/or Services from UPS Power Services Ltd.

Deliverables: all documents, products and materials developed by UPS Power Services Ltd or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts)

Director: a director registered at Companies House as a director of the relevant company.

Goods: any goods agreed in the Contract to be bought by the Customer from UPS Power Services Ltd (including any part or parts of them).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Maintenance Contract: the contract for the ongoing maintenance of the Customer's equipment, as attached to the Appendix (if applicable).

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or other written instruction, the Customer's written acceptance of UPS Power Services Ltd's quotation, or overleaf, as the case may be.

Order Acknowledgement: UPS Power Services Ltd's email or other written acknowledgment of any Order.

UPS Power Services Ltd: UPS Power Services Ltd, company registration number 10853351, registered at 20-22 Wenlock Road, London, N1 7GU.

Services: the services, including without limitation any Deliverables, to be provided by UPS Power Services Ltd under the Contract.

Specification: the specification agreed between UPS Power Services Ltd and the Customer.

Working Day: a day other than a Saturday, Sunday or English bank holiday.

1.1. In these Conditions:

- a. a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it;
- b. a reference to one gender includes a reference to all genders;
- c. condition headings do not affect the interpretation of these conditions;
- d. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- e. a references to a party includes its successors or permitted assigns;
- f. 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; and
- g. a reference to **writing or written** includes emails but not faxes.

2. Conclusion and scope of contract

- 2.1. The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The Order shall only be deemed to be accepted when UPS Power Services Ltd issues an Order Acknowledgement, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.2. Any quotation given by UPS Power Services Ltd shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of UPS Power Services Ltd which is not set out in the Contract.
- 2.4. Technical data, photos, drawings and other information contained in UPS Power Services Ltd's brochures and other material and information issued by UPS Power Services Ltd is provided for illustrative purposes, is approximate only, does not form part of the Contract and may not be relied upon by the

Customer (except to the extent that UPS Power Services Ltd has specifically referred thereto in its Order Acknowledgement). UPS Power Services Ltd reserves the right to make changes to such information from time to time without prior notice to the Customer.

- 2.5. The quantity and description of any Goods shall be as set out in UPS Power Services Ltd's Order Acknowledgement.
- 2.6. UPS Power Services Ltd reserves the right to make any changes in the specification of Goods which may be required to conform with any applicable statutory requirements.
- 2.7. The Customer may cancel any Order by giving written notice of such cancellation to UPS Power Services Ltd and the Customer acknowledges that, in such circumstances, it shall reimburse to UPS Power Services Ltd all costs or losses incurred by UPS Power Services Ltd as a direct result of such cancellation, which typically will never be less than twenty five percent (25%) of the order value (excluding VAT) and may be the full order value. Any such reimbursement shall be payable within 30 days the date of UPS Power Services Ltd's confirmation of cancellation costs.

3. Supply of Goods

- 3.1. Subject to clause 3.3, UPS Power Services Ltd warrants that (subject to the other provisions of these Conditions) upon delivery and for a period of 12 months from the date of delivery (or such longer period as may be stated in the Order Acknowledgement), all Goods shall:
 - a. conform in all material respects with their description and the Specification; and
 - b. be free from material defects in material and workmanship.
 - c. be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
 - d. be fit for any purpose held out by UPS Power Services Ltd.
- 3.2. UPS Power Services Ltd reserves the right to amend the Specification if so required by any applicable statutory or regulatory requirements, without notice to the Customer unless anything other than a minor adjustment.
- 3.3. UPS Power Services Ltd shall not be liable for a breach of the warranties in clause 3.1 if:
 - a. the Customer makes any further use of such Goods after giving such notice; or
 - b. the defect arises because the Customer failed to follow UPS Power Services Ltd's oral or written instructions (or the instruction of the relevant manufacturer, if not UPS Power Services Ltd) as to the handling, storage, environment, installation, commissioning, use or maintenance of the Goods or (if there are no such instructions) good trade practice; or
 - c. the Customer or any third party attempts to maintain, service, alter or repair such Goods without the prior written consent of a Director of UPS Power Services Ltd; or
 - d. the defect arises as a result of UPS Power Services Ltd following any drawing, design or specification supplied by the Customer; or
 - e. the defect arises as a result of fair wear and tear, willful damage, negligence or abnormal working conditions; or
 - f. the defect arises due to any foreign body entering the Goods otherwise than through UPS Power Services Ltd's negligence; or
 - g. the defect arises due to vermin gaining access to the Goods; or
 - h. the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 3.4. Subject to clause 3.3, if:
 - a. the Customer gives notice in writing within 5 days of its receipt of the Goods that some or all of the Goods do not comply with any of the warranties set out in clause 3.1;
 - b. UPS Power Services Ltd is given a reasonable opportunity of examining such Goods; and
 - c. the Customer (if asked to do so by UPS Power Services Ltd) returns such Goods to UPS Power Services Ltd's place of business at its own cost and risk (unless otherwise agreed),

UPS Power Services Ltd shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 3.5. The terms of these Conditions shall apply to any repaired or replacement Goods supplied by UPS Power Services Ltd under clause 3.4.
- 3.6. Except as provided in this clause 3, UPS Power Services Ltd shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in clause 3.1.
- 3.7. Any Goods replaced shall belong to UPS Power Services Ltd and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the warranty period.

4. Supply of Services

- 4.1. UPS Power Services Ltd shall provide the Services to the Customer in accordance with the Specification in all material respects.
- 4.2. UPS Power Services Ltd shall use reasonable endeavours to meet any performance dates for the Services specified in the Order Acknowledgement or otherwise advised to the Customer in writing, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 4.3. UPS Power Services Ltd shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and UPS Power Services Ltd shall notify the Customer in any such event.
- 4.4. UPS Power Services Ltd warrants to the Customer that the Services will be provided using reasonable care and skill.

5. Ongoing maintenance

- 5.1. To the extent that the Services comprise ongoing maintenance support of the Customer's equipment, the terms of the Maintenance Contract shall apply.
- 5.2. To the extent of any conflict between these Conditions and the terms of the Maintenance Contract, these Conditions shall prevail.

6. Delivery and delay

- 6.1. Unless otherwise agreed in writing, delivery shall be Ex Works (**Incoterms 2010**) (2 King Street Nottingham, NG1 2AS) or, where delivery is direct from UPS Power Services Ltd's suppliers, Ex Works such address as may be notified to the Customer.
- 6.2. Delivery of the Goods shall be completed once the Goods are made available for collection by the Customer at a time and date notified to it, at which time risk in the Goods shall pass to the Customer (notwithstanding that such Goods may still be held on UPS Power Services Ltd's premises).
- 6.3. Any date specified by UPS Power Services Ltd for delivery of the Goods is intended to be an estimate only and time for delivery shall not be of the essence. UPS Power Services Ltd shall not be liable for any delay in delivery of the Goods that is caused by a force majeure event or the Customer's failure to provide UPS Power Services Ltd with any instructions that are relevant to the supply of the Goods.
- 6.4. If for any reason the Customer fails to collect any of the Goods once delivered, or UPS Power Services Ltd is unable to deliver the Goods as anticipated because the Customer has not provided appropriate instructions, documents, licences or authorisations, or the Customer delays the anticipated delivery date for an unreasonable period:
 - a. risk in the Goods shall pass to the Customer; and
 - b. the Customer shall be liable for all related costs and expenses (including without limitation, storage and insurance).

If the Customer has not collected the Goods within 30 days after the collection date notified by UPS Power Services Ltd, UPS Power Services Ltd reserves the right to resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling or destruction costs, may at its discretion account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 6.5. Unless otherwise agreed in writing, the Customer shall be responsible for all loading, unloading, storage and handling of Goods at the time of delivery.
- 6.6. UPS Power Services Ltd shall not be liable for any non-delivery of Goods unless the Customer gives written notice to UPS Power Services Ltd of non-delivery within (5) days from the date when the Goods in the ordinary course of events would have been received.
- 6.7. Without prejudice to its obligations pursuant to clause 3.4, UPS Power Services Ltd shall not be liable for any damage to Goods incurred during transit or any shortage of Goods unless the Customer:
 - a. notes any damage or shortage of Goods on the carrier's delivery note (or marks it "unchecked") and signs the delivery note accordingly; and
 - b. gives written notice to UPS Power Services Ltd of such damage or shortage within 24 hours of receipt of the Goods.
- 6.8. Any liability of UPS Power Services Ltd for non-delivery of the Goods, or failure to deliver the Goods within a reasonable time, shall be limited to the replacement or re-delivery of the Goods within a reasonable time or issuing a credit note against any invoice raised for such Goods to the Customer.

7. Retention of title

- 7.1. Title to the Goods shall not pass to the Customer until UPS Power Services Ltd has received in full in cleared funds all sums due to it in respect of:
 - a. the Goods; and
 - b. all other sums which are or which become due to UPS Power Services Ltd from the Customer in relation to any Contract.

If the Customer resells the Goods prior to UPS Power Services Ltd receiving

such payment in full title to the Goods shall pass pursuant to clause 7.4 below.

- 7.2. Until title in the Goods has passed to the Customer, the Customer shall hold the Goods on a fiduciary basis as UPS Power Services Ltd's bailee and shall properly store, protect and insure the Goods to their full price. If so requested by UPS Power Services Ltd, the Customer shall store the Goods separately from all other goods of the Customer or any other third party in such a way that they are clearly identified as UPS Power Services Ltd's property. The Customer shall notify UPS Power Services Ltd immediately if it becomes subject to any of the events listed in clause 13.2a) to clause 13.2b).
- 7.3. Until title in the Goods has passed to the Customer, the Customer shall within 2 days of request by UPS Power Services Ltd:
 - a. provide to UPS Power Services Ltd such information relating to the Goods as UPS Power Services Ltd may require from time to time; and
 - b. deliver to UPS Power Services Ltd such Goods (and if the Customer fails to deliver the Goods, UPS Power Services Ltd, its agents and employees may enter any premises where the Goods are or may be stored and repossess the Goods).
- 7.4. Subject to clause 4.3 and 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before UPS Power Services Ltd receives payment for the Goods. However, if the Customer resells the Goods before that time:
 - a. it does so as principal and not as UPS Power Services Ltd's agent; and
 - b. title to the Goods shall pass from UPS Power Services Ltd to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5. If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 13.2b) to clause 13.2d) then, without limiting any other right or remedy UPS Power Services Ltd may have:
 - a. the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - b. UPS Power Services Ltd may at any time:
 - i. require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - ii. if the Customer fails to deliver up such Goods promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. Customer's obligations

- 8.1. The Customer shall:
 - a. ensure that the terms of the Order and (if submitted by the Customer) the Specification are complete and accurate;
 - b. co-operate with UPS Power Services Ltd in all matters relating to the Contract;
 - c. provide UPS Power Services Ltd, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by UPS Power Services Ltd to provide the Services;
 - d. provide UPS Power Services Ltd with such information and materials as UPS Power Services Ltd may reasonably require to supply the Goods and/or Services, and ensure that such information is accurate in all material respects;
 - e. where applicable, prepare the Customer's premises for the supply of the Services;
 - f. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - g. keep and maintain all materials, equipment, documents and other property of UPS Power Services Ltd (**UPS Power Services Ltd Materials**) at the Customer's premises in safe custody at its own risk, maintain UPS Power Services Ltd Materials in good condition until returned to UPS Power Services Ltd, and not dispose of or use UPS Power Services Ltd's Materials other than in accordance with UPS Power Services Ltd's written instructions or authorisation.
- 8.2. If UPS Power Services Ltd's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer, its employees, agents, consultants and subcontractors or failure by the Customer its employees, agents, consultants and subcontractors to perform any relevant obligation (**Customer Default**):
 - a. UPS Power Services Ltd shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays UPS Power Services Ltd's performance of any of its obligations;
 - b. UPS Power Services Ltd shall not be liable for any costs or losses

- sustained or incurred by the Customer arising directly or indirectly from UPS Power Services Ltd's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- c. the Customer shall reimburse UPS Power Services Ltd on written demand for any costs or losses sustained or incurred by UPS Power Services Ltd arising directly or indirectly from the Customer Default.

9. Prices and payment

- 9.1. The price payable and date of payment shall be the price and date of payment quoted in the Order Acknowledgement. Prices are exclusive of VAT, are on the basis of Ex Works (Incoterms 2010) and exclude any specialist packaging required for the Goods, carriage, insurance and delivery charges. VAT will be charged in addition at the rate current at the date of delivery, where applicable. UPS Power Services Ltd reserves the right, by giving written notice to the Customer, to adjust the price to reflect any variations in exchange rates between the date of Order Acknowledgement and the delivery date (if applicable), as well as to reflect any changes agreed with the Customer regarding the nature or quantity of the Goods or Services or the delivery date of the same.
- 9.2. The Customer shall make payment of all amounts invoiced by UPS Power Services Ltd within 30 days of the date of the relevant invoice. Time for payment of the price shall be of the essence of the Contract. No payment shall be deemed to have been received until UPS Power Services Ltd has received cleared funds.
- 9.3. In respect of Goods, UPS Power Services Ltd shall invoice the Customer on or at any time after completion of delivery. In respect of Services, UPS Power Services Ltd shall invoice the Customer in advance unless otherwise agreed in writing.
- 9.4. The Customer shall pay any bank charges or other costs incurred in relation to the transfer of any amounts due to UPS Power Services Ltd. Any delay caused in relation to such charges shall not excuse the Customer's failure to meet its payment obligations pursuant to clause 9.2.
- 9.5. If the Customer fails to make payment on the due date then without prejudice to any other rights or remedy available to UPS Power Services Ltd, UPS Power Services Ltd shall be entitled to charge interest on the sum outstanding at the rate of 4% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after judgment.
- 9.6. The Customer undertakes to pay UPS Power Services Ltd in full, without deduction, set-off, counterclaim, discount, abatement or otherwise, notwithstanding any right or interest howsoever arising that the Customer may have pursuant to the same Contract or any other agreement, whether current or to be entered into.
- 9.7. In the case of late payment by the Customer, UPS Power Services Ltd shall be entitled to postpone delivery of all orders under the same Contract and/or other Contracts, and to cancel the Contract and/or other Contracts.
- 9.8. All payments payable to UPS Power Services Ltd under the Contract shall become due immediately on termination of the Contract notwithstanding any other provision.

10. Intellectual property rights

- 10.1. All Intellectual Property Rights in or arising out of or in connection with the Goods or Services shall be owned by UPS Power Services Ltd, save to the extent that any Specification or part thereof has been provided by the Customer, in which case the Customer shall own all Intellectual Property Rights in such materials.
- 10.2. The Customer hereby indemnifies UPS Power Services Ltd against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by UPS Power Services Ltd in connection with any claim made against UPS Power Services Ltd for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with:
- UPS Power Services Ltd's use of the Specification and/or the Customer's designs or instructions in the supply of the Goods or Services;
 - modifications or improvements in or to any Goods by the Customer or any third party without the prior written consent of a Director of UPS Power Services Ltd;
 - any product or materials which are not of UPS Power Services Ltd's origin and/or which are furnished by the Customer to UPS Power Services Ltd in relation to the Contract;
 - use of the Goods in combination with any other hardware, software or application which is not in accordance with the manufacturer's specification for such Goods;
 - use of any Goods in a manner or for a purpose not made known to UPS Power Services Ltd; or
 - the Customer's failure to replace or update any Goods as recommended by UPS Power Services Ltd to avoid a potential infringement.

This clause 10.2 shall survive termination of the Contract.

- 10.3. The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods or Services, the Customer's use of any such Intellectual Property Rights is conditional on UPS Power Services Ltd obtaining a written licence from the relevant licensor on such terms as will entitle UPS Power Services Ltd to license such rights to the Customer.
- 10.4. All UPS Power Services Ltd Materials are and shall remain the exclusive property of UPS Power Services Ltd.

11. Confidentiality

A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

12. Limitation of liability

- 12.1. The following provisions set out the entire financial liability of UPS Power Services Ltd to the Customer (including any liability for the acts or omissions of its employees, agents and sub-contractors) in respect of:
- its breach of or delay in performing any of these Conditions;
 - any tortious acts or omissions (negligent or otherwise) by or on behalf of UPS Power Services Ltd; or
 - any action arising out of misrepresentation by or on behalf of UPS Power Services Ltd (save in the case of fraudulent misrepresentation).
- 12.2. Nothing in these Conditions shall limit or exclude UPS Power Services Ltd's liability for death or personal injury caused by its negligence, fraud, fraudulent misrepresentation or any other loss to the extent that it may not be excluded or limited by law.
- 12.3. Subject to clauses 10.2 and 12.2, UPS Power Services Ltd's liability in respect of claims that any Goods infringe or allegedly infringe the intellectual property rights of any third parties shall be capped at £10,000 per claim or series of related claims.
- 12.4. Subject to clauses 12.2, 12.3 and 12.5, UPS Power Services Ltd's total liability to the Customer in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, arising out of or in connection with the Contract or the subject matter thereof shall not exceed an amount equal to 150% of the amounts received under the Contract in respect of the Goods or Services giving rise to the claim.
- 12.5. Subject to clause 12.2, UPS Power Services Ltd shall not be liable to the Customer for any: (i) loss of or damage to data; (ii) loss of anticipated profit or savings; (iii) loss of business; (iv) depletion of goodwill; or (v) indirect, special or consequential losses, liabilities, damages, costs or expenses.
- 12.6. All warranties, conditions and other terms implied by statute or common law are to be the fullest extent permitted by law excluded from the Contract. This clause 12 shall survive termination of the Contract.

13. Termination

- 13.1. Unless terminated earlier in accordance with this condition 13, the Contract shall commence on the date of the Order and expire once all Goods and/or Services have been satisfactorily supplied and all due payment has been received.
- 13.2. Without limiting its other rights or remedies, either party shall be entitled to terminate the Contract immediately if the other party:
- commits a material breach, which, if remediable, has not been remedied within fourteen (14) days of receipt of written notice to do so by the other party;
 - has any distress, execution or other process levied upon any of its assets; or
 - has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors; or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of solvent reconstruction or amalgamation; or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof; or documents are filed with the

court for the appointment of an administrator over it or notice of intention to appoint an administrator is given by it or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or a resolution is passed or a petition presented to any court for its winding-up or for the granting of an administration order in respect of it, or any proceedings are commenced relating to its insolvency or possible insolvency; or

- d. ceases or threatens to cease to carry on all or a substantial part of its business.
- 13.3. Either party shall be entitled to terminate the Contract on immediate written notice in the circumstances described at clause 14.2.
- 13.4. Without limiting its other rights or remedies, UPS Power Services Ltd may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract within 14 days of the due date for payment.
- 13.5. Without limiting its other rights or remedies, UPS Power Services Ltd may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and UPS Power Services Ltd if:
- the Customer fails to pay any amount due under the Contract within 14 days of the due date for payment; or
 - the Customer becomes subject to any of the events listed in clause 13.2b) to clause 13.2d), or UPS Power Services Ltd reasonably believes that the Customer is about to become subject to any of them.
- 13.6. The expiry or termination of the Contract, however arising, shall be without prejudice to the rights and duties of the parties accrued prior to termination. Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding expiry or termination.
- 13.7. On expiry or termination of the Contract for any reason:
- the Customer shall immediately pay to UPS Power Services Ltd all of UPS Power Services Ltd's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, UPS Power Services Ltd shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
 - the Customer shall immediately return to UPS Power Services Ltd all Deliverables that have not been paid for in full and all UPS Power Services Ltd Materials. If the Customer fails to do so then UPS Power Services Ltd may enter the Customer's premises and take possession of them; until they have been returned or delivered, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
14. **Force majeure**
- 14.1. UPS Power Services Ltd shall not be liable for any failure to deliver or any other failure to comply with any Conditions or delay in the performance of any of its obligations due to any cause beyond its reasonable control including but not limited to any late performance or non-performance or breach of contract by suppliers; acts of God or a public enemy; judicial action; shortage of materials; breakdowns in computer facilities; telecommunication delays or malfunctions; fire, flood; war, hostilities; riot; strike, lockouts (whether involving the workforce of UPS Power Services Ltd or any other party); export and import restrictions; severe bad weather conditions; shortage or lack of energy supplies; or breakdown of plant or machines.
- 14.2. UPS Power Services Ltd shall notify the Customer within a reasonable time of the the force majeure event beginning of the nature and extent of the circumstances in question. If the circumstances are still continuing 3 months from and including the date UPS Power Services Ltd notified the Customer of the force majeure event, then either party may give written notice to the other terminating the Contract with immediate effect.

15. **Amendments**

No variation or addition to the Contract shall be effective unless in writing and signed by a Director of each party.

16. **Severability**

If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent required, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect. 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.

17. **Third party rights**

No term of the Contract shall be enforceable by a third party being any person other than the parties and their permitted successors and assigns.

18. **Waiver**

Any waiver by either party of any breach of, or any default under, any provision of the Contract by either party shall not be deemed a waiver of any subsequent breach or default and shall not affect the other terms of the Contract. Failure or delay by a party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

19. **Notices**

19.1. Any notice given under 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 may be served personally during the course of a business day or may be sent to the other party by registered or recorded delivery; by commercial courier; or by email transmission (confirmed by post).

19.2. A notice shall be deemed to have been served:

- if it was served in person, at the time of service;
- if sent by pre-paid first class post or other next Working Day delivery service, at 9.00 am in the place of receipt on the second Working Day after posting;
- if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; and
- if it was served by email, at the time of successful transmission if sent during the course of a business day and otherwise at 9.00 am on the next following business day, provided that a further copy of such notice is received by any other means permitted under this clause 19.

19.3. Each party's address for the service of notice shall be its address set out in the Order Acknowledgement or such other address as it specifies by notice to the other. Email notices to UPS Power Services Ltd should be sent to: info@upspowerservices.co.uk.

19.4. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

20. **Venue and Governing Law**

This 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 English law, and the parties hereby submit to the exclusive jurisdiction of the English courts.