

WAXMAN ENERGY LIMITED

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

- 1.1. In these terms and 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.

Company: Waxman Energy Limited of Grove Mills, Elland Lane, Elland, HX5 9DZ, company reg. no. 03135964, VAT No. GB640603569;

Contract: the contract between the Company and the Purchaser for the sale and purchase of the Goods in accordance with these Terms.

Force Majeure Event: has the meaning given to it in condition 10;

Goods: solar PV modules and any associated products the Purchaser may order from the Company;

Order: the Purchaser's order for the Goods;

Purchaser: the person buying the Goods from the Company;

Terms: these terms and conditions.

2. BASIS OF THE CONTRACT

- 2.1. These are the Terms on which the Company supplies Goods to the Purchaser and apply to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. The Purchaser must read these Terms carefully, and check that the details on the Order and in these Terms are complete and accurate, before it submits an Order. If the Purchaser thinks that there is a mistake please contact the Company to discuss.
- 2.3. When the Purchaser submits an Order to the Company, this does not mean the Company has accepted the Order. The Company's acceptance of the Order will take place when described in condition 2.4.
- 2.4. These Terms will become binding on the Purchaser and the Company when the Purchaser is issued with an acceptance of an Order by email (**Order Confirmation**), at which point a contract will come into existence between the Company and the Purchaser.
- 2.5. If any of these Terms conflict with any term of the Order, these Terms will take priority.
- 2.6. The Contract constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- 2.7. The Company shall assign an order number to the Order and inform the Purchaser of it in the Order Confirmation.
- 2.8. If the Company is unable to supply the Purchaser with Goods, for example because those Goods are not in stock or are no longer available, the Company will inform the Purchaser of this in writing and will not process the Order. If the Purchaser has already paid for the Goods, the Company will refund the full amount as soon as possible.
- 2.9. No stock can be held or reserved without an official Order and delivery date.
- 2.10. The installation of the Goods is the responsibility of the Purchaser. The Company does not provide installation services and this is not included in the price of the Goods. Any advice which the Company provides to the Purchaser or any customer of the Purchaser relating to installation or use of the Goods shall be for assistance only and shall not create any liability or duty of care on the part of the Company.

3. PRICES AND PAYMENT

- 3.1. Subject to condition 3.3, the price of the Goods will be stated by us in writing or (for online orders) as shown on the Company's website at the time the Company confirms the Order. The prices may change at any time, but price changes will not affect Orders that the Company have confirmed with the Purchaser. The prices stated are for stipulated quantities only and do not apply for lower quantities.
- 3.2. The prices are exclusive of value added tax, customs duties and import levies or any similar duties or levies.
- 3.3. Any promotional prices or deals are subject to availability and may be withdrawn at any time.
- 3.4. The price of the Goods excludes delivery costs, which will be calculated and added to the total amount due and notified to the Purchaser before placing the Order. Payment of the total amount will be taken when confirming the Order.
- 3.5. The Company shall be entitled to adjust the price stated to take into account any change in specification made at the request of the Purchaser or any alteration before the date of delivery in the cost to the Company of labour materials sub-contracted services or import or export duties or tariffs or transport or fluctuations in currency exchange rates which directly affects the cost to the Company of supplying the Goods.
- 3.6. It is always possible that, despite our best efforts, some of the Goods may be incorrectly priced. The Company will normally check prices as part of its despatch procedures so that, where the Goods' correct price is less than the stated price, the Company will charge the lower amount when dispatching the Goods to the

Purchaser. If the Goods' correct price is higher than the price stated by us or (for online orders) on the website, the Company will contact the Purchaser. If the pricing error is obvious and unmistakable and could have reasonably been recognised by the Purchaser as a mispricing, the Company does not have to provide the Goods to the Purchaser at the incorrect (lower) price.

- 3.7. Any charges for paying by credit card will be added to the total amount and notified to the Purchaser before placing the Order.
- 3.8. In the case of Orders for UK delivered Goods, unless otherwise expressly stated, prices are due and payable in United Kingdom pounds Sterling prior to despatch of the Goods.
- 3.9. In the case of all Orders, if the Purchaser fails to make payment in full, then (without prejudice to any other rights of the Company) the Purchaser shall, without any need for the Company to give notice, become liable to pay the Company interest on the amount for the time being unpaid at the rate of 2.5% above the base rate from time to time of HSBC Bank plc which shall accrue on a daily basis, compounded monthly, and be calculated from the due date of payment until the date of actual payment, both before and after any court judgment together with any costs reasonably incurred by the Company in seeking to recover payment, and:-
- 3.9.1. the Company shall be entitled to suspend all or any other deliveries to be made under that or any other contract with the Purchaser; in such event the Purchaser shall not in any respect be released from its obligations to the Company under that or any such other contract; or
- 3.9.2. instead of suspension in accordance with paragraph 3.9.1 above the Company shall be entitled to terminate the relevant contract or any other contract with the Purchaser in accordance with condition 11 below and to claim damages from the Purchaser.
- 3.10. Time for payment is of the essence of these Terms.

4. DESPATCH AND DELIVERY

- 4.1. The exact method and target date for delivery as agreed between the Company and the Purchaser shall be stated on the Order Confirmation or otherwise agreed in writing. Any despatch or delivery date shown on the Order Confirmation or otherwise agreed in writing is a target date only, and whilst the Company will use all reasonable endeavours to achieve any stated despatch or delivery date it accepts no liability whatsoever for any loss or damage resulting from delay howsoever the same shall have been caused. Time of delivery is not of the essence and shall not be made of the essence by notice.
- 4.2. The Company may accept Orders for delivery outside the UK. If such an Order is accepted the method of delivery shall be stated on the Order Confirmation or otherwise agreed in writing.
- 4.3. In the case of Orders for UK delivery, delivery shall be effected on loading the Goods on to the carrier's transport at the Company's premises. Occasionally delivery of the Goods may be affected by a Force Majeure Event. See condition 10 for the Company's responsibilities when this happens.
- 4.4. Upon delivery of the Goods, in each case the Purchaser shall sign the Company's delivery note and check the consignment. If the Goods are not delivered or upon delivery are found to be damaged or short the Company shall not in any event be liable unless:
- 4.4.1. the Purchaser gives written notice to the Company and to the carrier within two working days of the date of delivery; and
- 4.4.2. the Purchaser gives the Company or its representative(s) a reasonable opportunity to inspect the Goods concerned in the state and condition and location in which they were delivered.
- 4.5. The Purchaser shall inspect the Goods for shade and quality and accept the Goods before they are installed, no claims will be considered after the Goods have been installed.
- 4.6. When the Goods are delivered or shipped in lots or by instalments the contract for the Goods shall be construed as a separate contract in respect of each lot or instalment subject to these conditions and subject to any special conditions incorporated in the contract in writing.
- 4.7. If the Company is not able to deliver the whole of the Order at one time due to operational reasons or shortage of stock, the Company will deliver the Order in instalments. The Company will not charge the Purchaser extra delivery costs for this. Each instalment shall constitute a separate contract governed by these Terms. If the Company is late delivering an instalment or one instalment is faulty, that will not entitle the Purchaser to cancel any other instalment.
- 4.8. If 10 Business Days after the day on which the Company notified the Purchaser that the Goods were ready for delivery the Purchaser has not accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods.

5. TITLE TO THE GOODS

- 5.1. Notwithstanding that the stated price may include the cost of carriage from the Company's premises the risk in the Goods shall pass to the Purchaser upon their transfer at such premises onto the carrier's or Purchaser's transport save that where the contract is stated to be CIF, FOB and CFR the risk shall pass to the Purchaser when the Goods are delivered onto the ship or aircraft.
- 5.2. The Purchaser shall keep the Goods fully insured against all risks normally insured against at least throughout the period between the risk therein passing to the Purchaser and the property therein ceasing to remain with the Company.
- 5.3. Title to the Goods shall not pass to the Purchaser until the Company has received payment in full for the Goods.

- 5.4. Until title to the Goods has passed to the Purchaser, the Purchaser shall:
- 5.4.1. hold the Goods on a fiduciary basis as the Company's bailee;
 - 5.4.2. store the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as the Company's property;
 - 5.4.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.4.4. maintain the Goods in satisfactory condition and keep them insured against risks for their full price from the date of delivery;
 - 5.4.5. notify the Company immediately if it becomes subject to any of the events in condition 11.2; and
 - 5.4.6. give the Company such information relating to the Goods as the Company may require from time to time.
- 5.5. Subject to clause 5.6, the Purchaser may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Purchaser resells the Goods before that time:
- 5.5.1. it does so as principal and not as the Company's agent; and
 - 5.5.2. title to the Goods shall pass from the Company to the Purchaser immediately before the time at which resale by the Purchaser occurs.
- 5.6. If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any of the events listed in clauses 11.2.2 to 11.2.11 (inclusive) then, without limiting any other right or remedy the Company may have:
- 5.6.1. the Purchaser's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 5.6.2. the Company may at any time:
 - 5.6.2.1. require the Purchaser to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - 5.6.2.2. if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.

6. SPECIFICATIONS, DESCRIPTIONS AND CATALOGUES

- 6.1. The images of the Goods on the Company's website are for illustrative purposes only. Although the Company has made every effort to display the Goods accurately, it cannot guarantee that the Purchaser's computer's display will accurately reflect the Goods. The Goods delivered to the Purchaser may vary slightly from those images. The Company is not responsible for any images or statements contained within any brochure or website produced or controlled by a third party including (but not limited to) the manufacturer of the Goods.
- 6.2. The Purchaser shall be responsible to the Company for the accuracy of any order and specification submitted by the Purchaser. Only specifications accepted in writing by the Company will form part of the contract for the Goods. The Purchaser shall be responsible for supplying to the Company all pertinent information relating to the supply of the Goods (including but not limited to the purpose for which the Goods are to be used). It is the Purchaser's responsibility to check the suitability of the Goods prior to order.
- 6.3. All drawings, descriptive matter, descriptions, specifications, photographs, physical examples, advertising and any other data issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and only being intended to serve merely for guide purposes only and no warranties or representations are given by the Company in respect of the same of the above.
- 6.4. Where a sample of the Goods is supplied or is inspected or is shown to the Purchaser such sample is provided for the sole purpose of giving an approximate idea of the Goods and for guide purposes only, the Purchaser shall not rely upon any representation or description concerning sample of any Goods supplied unless reference is made thereto overleaf.
- 6.5. Accordingly the Company shall not be liable for the accuracy of any information or samples referred to whether in 6.1, 6.2 or 6.3 or otherwise and such information and samples will not form part of the contract and the contract shall not be a sale by description or a sale by sample as defined in s13 and s15 of the Sale of Goods Act 1979.
- 6.6. It is the Purchaser's responsibility to specify certification requirements at the time of ordering.
- 6.7. Where the Goods are handmade or comprise of natural materials, the Goods may vary in accordance with reasonable natural tolerances, (e.g. appearance of or in dimension (including crazing) from the specification or order made by the Purchaser) and the Purchaser irrevocably and unconditionally waives its right to make any claim against the Company in respect of any such variations.
- 6.8. The Company reserves the right to substitute alternative Goods where necessary and to make changes to any specifications provided that such substitutions or changes are minor (i.e. do not materially alter the quality or performance of the Goods) or which are required to comply with any applicable statute, statutory instrument or regulatory requirements.

7. WARRANTY AND LIABILITY

- 7.1. The Goods are sold with the benefit of a manufacturer's warranty, details of which will be supplied to the Purchaser on request ("**Warranty**"). Except as provided in condition 8, the Company shall have no liability to the Purchaser in respect of the manufacturer's failure to comply with the Warranty.
- 7.2. Except as set out in condition 7.1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the contract.
- 7.3. Nothing in these Terms shall limit or exclude the Company's liability for:
- 7.3.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 7.3.2. fraud or fraudulent misrepresentation; or
 - 7.3.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 7.3.4. defective products under the Consumer Protection Act 1987; or
 - 7.3.5. any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 7.4. Subject to condition 7.3:
- 7.4.1. the Company shall not be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the contract; and
 - 7.4.2. the Company's total liability to the Purchaser in respect of all losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the price of the Goods.

8. RETURNS

- 8.1. If:
- 8.1.1. the Purchaser gives notice in writing to the Company within reasonable time of discovery during the relevant Warranty period that some or all of the Goods do not comply with the Warranty; and
 - 8.1.2. the Company is given reasonable opportunity of examining such Goods; and
 - 8.1.3. the Purchaser (if asked to do so by the Company) returns such Goods to the Company's place of business (at the reasonable cost of the Company) or makes the Goods available for collection by the Company,
- the Company shall provide the Purchaser with reasonable assistance (at the Purchaser's cost) in dealing with the manufacturer to obtain any remedy to which the Purchaser may be entitled under the terms of the Warranty.
- 8.2. If inspection or testing of the Goods following their return to or collection by the Company in accordance with condition 8.1.3 reveals no defect in the Goods then the Company shall be entitled to charge the Purchaser for any costs reasonably incurred by the Company in accordance with condition 8.1.3.
- 8.3. For the return of non-defective Goods:
- 8.3.1. the Company has absolute discretion whether it accepts Goods to be returned by the Purchaser;
 - 8.3.2. Goods procured and supplied for special orders cannot be returned;
 - 8.3.3. if Goods are accepted for return they may only be returned within a one month period from invoice date; and
 - 8.3.4. Goods that are accepted for return will be subject to a 20% restocking charge.

9. INDEMNITIES

The Purchaser shall be solely responsible for and shall keep the Company indemnified against any loss, liability or expense arising directly or indirectly from the negligent, wrongful, or inappropriate (including a failure to follow manufacturers' instructions) use or re-sale of the Goods.

10. FORCE MAJEURE

- 10.1. For the purposes of these Terms, Force Majeure Event means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 10.2. The Company shall not be liable to the Purchaser as a result of any delay or failure to perform its obligations under these Terms as a result of a Force Majeure Event.
- 10.3. If the Force Majeure Event prevents the Company from providing any of the Goods for more than 12 weeks, the Company shall, without limiting its other rights and remedies, have the right to terminate any agreement by giving written notice to the Purchaser.

11. TERMINATION

- 11.1. If the Purchaser becomes subject to any of the events listed in condition 11.2, or the Company reasonably believes that the Purchaser is about to become subject to any of them and notifies the Purchaser accordingly, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries without incurring any liability to the Purchaser, and all outstanding sums in respect of Goods delivered to the Purchaser shall become immediately due.
- 11.2. For the purposes of condition 11.1, the relevant events are:
- 11.2.1. the Purchaser commits any material breach of any of these Terms (including without limitation Terms concerning the time for payment of the purchase price) provided such breach is remediable that the Company has previously given to the Purchaser notice thereof and the same has not been remedied within seven days thereafter;
 - 11.2.2. the Purchaser 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 a 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;
 - 11.2.3. the Purchaser 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 these events take place for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser;
 - 11.2.4. 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 Purchaser, other than for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser;
 - 11.2.5. a creditor or encumbrancer of the Purchaser 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;
 - 11.2.6. 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 Purchaser;
 - 11.2.7. the holder of a qualifying charge over the Purchaser's assets has become entitled to appoint or has appointed an administrative receiver;
 - 11.2.8. a person becomes entitled to appoint a receiver over the Purchaser's assets or a receiver is appointed over the Purchaser's assets;
 - 11.2.9. any event occurs, or proceeding is taken, with respect to the Purchaser in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 11.2.1 to condition 11.2.8 (inclusive);
 - 11.2.10. the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; and
 - 11.2.11. the Purchaser's financial position deteriorates to such an extent that in the Company's opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.3. Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Purchaser and the Company if the Purchaser becomes subject to any of the events listed in clause 11.2.2 to clause 11.2.11, or the Company reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.
- 11.4. In the event of any such termination:-
- 11.4.1. the Company may at any time require the Purchaser to deliver up the Goods in which title remains with the Company and, if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them and the Purchaser shall cease to be entitled to sell any Goods supplied by the Company which have not yet been paid for;
 - 11.4.2. the Company shall be entitled by notice in writing to the Purchaser to declare (and there shall forthwith become) immediately due and payable any amounts outstanding from the Purchaser to the Company under that or any other contract and all such amounts shall bear interest at the rate set out in condition 3 above, calculated from the date of the notice until actual payment.
- 11.5. The provisions of this condition 11 and the exercise by the Company of its rights thereunder are without prejudice to any other rights of the Company.

12. LIEN

The Company shall have a general lien over all and any goods or property belonging to the Purchaser which is in possession of the Company from time to time in respect of all and any sums due from the Purchaser to the Company and shall be entitled to exercise such lien by selling such goods or property and applying the proceeds of sale against any sum so due at any time following the expiry of 7 days notice to the Purchaser demanding payment thereof.

13. PROCESSING

- 13.1. In relation to any agreement made with the Purchaser which involves processing of property or goods belonging to the Purchaser (or a third party) such agreement is made on the assumption that such goods or property are suitable for processing on the Company's premises. If this proves not to be the case the Company reserves the right to cancel or renegotiate the agreement and the purchaser shall have no claim whatsoever against the Company in this regard.
- 13.2. Where an agreement involves work upon materials supplied by the Purchaser the Company shall use reasonable care to remove contaminating matter therefrom but shall have no liability whatsoever (whether for negligence or otherwise) arising out of the presence of such contamination.

14. GENERAL

- 14.1. Notices to be served hereunder shall be served in writing on the relevant party at its address shown on the Order Confirmation, invoice or other relevant documents or such other address as may be notified in accordance with this clause or (in the case of a company) its registered office for the time being or (in the case of a Purchaser not being a company) its principal place of business for the time being, by pre-paid first class post (if in the United Kingdom) or prepaid airmail (if outside the United Kingdom) and such notices shall be deemed to have been duly served 2 days (7 days in the case of airmail post) after the same has been put in the post properly addressed.
- 14.2. The headings used in these Terms are for convenience only and shall not affect the construction thereof.
- 14.3. If for any reason any wording in any part of these Terms is rendered or held by a court to be unreasonable, void or unenforceable then such offending wording shall be deemed severable from the remaining wording in such part of these conditions, and the remainder of such wording shall continue to have full force and effect.
- 14.4. No delay on the part of the Company in enforcing any of these Terms shall prejudice its strict rights hereunder or be construed as a waiver thereof.
- 14.5. All contracts shall be construed in accordance with English law and the Company and the Purchaser hereby submit to the exclusive jurisdiction of the English courts.
- 14.6. No modification of these Terms shall be effective unless made by an express written agreement between the Company (acting through a Director) and the Purchaser. The signing by the Company of any of the Purchaser's documentation shall not imply or effect any such modification.
- 14.7. A person who is not a party to the Contract shall not have any rights to enforce its terms