

**Brand Energy & Infrastructure Services UK, Ltd.**  
**Sale Terms and Conditions**  
**Edition 2017 – effective from 09 January 2017**



**The Buyer's attention is drawn in particular to:**

- clause 19: the rights of the Buyer where the Buyer is a consumer;
- clause 14: the Buyer's responsibility and liability in relation to the use of the Goods; and
- clause 16: the limitation of Brand Energy & Infrastructure Services UK, Ltd. liability.

**1. Interpretation**

**1.1 In the Terms -**

- "Business Day" means a day that is not a Saturday, Sunday or public holiday in England;
- "Buyer" means the person to whom a Quotation is made or who makes an Order (as the case may be);
- "Consumer" means a consumer as defined in the Unfair Contract Terms Act 1977 Section 12 as amended or the Unfair Terms in Consumer Contracts Regulations 1999 Regulation 3(1);
- "Contract" means the contract for the sale of the Goods between Brand Energy & Infrastructure Services UK, Ltd. and the Buyer which comes into existence on the Buyer accepting the Quotation or Brand Energy & Infrastructure Services UK, Ltd. accepting the Order (as the case may be);
- "Default Event" means an event set out in clause 15.1;
- "Delivery Date" means the date set out in the Quotation or Order (as the case may be) for the delivery of the Goods and if no date is set out in the Quotation or Order, the date stipulated for delivery of the Goods Brand Energy & Infrastructure Services UK, Ltd. on reasonable notice to the Buyer prior to delivery;
- "Delivery Address" means the place set out in the Quotation or Order (as the case may be) where the Goods are to be delivered and if no place is set out in the Quotation or Order, the place of delivery will be the Brand Energy and Infrastructure premises stipulated by Brand Energy & Infrastructure Services UK, Ltd. on reasonable notice to the Buyer prior to the Delivery Date;
- "Goods" means the goods (including any instalment of the goods or any parts for them) described in the Quotation or Order (as the case may be);
- "Brand Energy & Infrastructure Services UK, Ltd." means Brand Energy & Infrastructure Services UK, Ltd., registered in England under number 8729615 and having its registered address at Building 100, Relay Point, Relay Drive, Tamworth, Staffordshire, England B77 5PA;
- "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce in force when the Contract comes into existence;
- "Order" means the Buyer's order (whether written or oral) to Brand Energy & Infrastructure Services UK, Ltd. for Brand Energy & Infrastructure Services UK, Ltd. to supply goods;
- "Price" means the price of the Goods and (unless the context otherwise requires) includes any other amount due to Brand Energy & Infrastructure Services UK, Ltd. in relation to the Goods in terms of clause 6;
- "Product Literature" has the meaning given to it in clause 14.1;
- "Quotation" means Brand Energy & Infrastructure Services UK, Ltd's written quotation to the Buyer for Brand Energy & Infrastructure Services UK, Ltd. to supply goods;
- "Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) any special terms agreed in writing between Brand Energy & Infrastructure Services UK, Ltd. and the Buyer.

**1.2.** A reference in the Terms to a provision of a statute is to be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

**1.3.** Unless the context otherwise requires –

- 1.3.1. another grammatical form of a defined word or expression will have a corresponding meaning;
- 1.3.2. the singular includes the plural and vice versa;
- 1.3.3. a reference to one gender includes all genders;
- 1.3.4. words denoting persons include firms and corporations and vice versa;
- 1.3.5. any phrase introduced by the term "including", "include", "in particular" or any similar expression is to be construed as illustrative and will not limit the sense of the words preceding the term; and
- 1.3.6. the phrase "as set out in the Order" or similar expression is, in relation to an oral Order, to be construed as "as provided by the Buyer when making the Order".

**1.4.** Unless otherwise stated, a reference to a clause is a reference to a clause in this document.

**1.5.** The clause headings in this document are for convenience only and will not affect the construction of the Terms.

**2. Basis of the sale**

- 2.1. The Terms will govern the Contract to the exclusion of any other terms, including any terms which the Buyer purports to apply in accepting the Quotation, making the Order, or under any confirmation of the Order, specification or other document.
- 2.2. No variation to the Terms will be binding unless agreed to in writing by Brand Energy & Infrastructure Services UK, Ltd. and the Buyer.
- 2.3. The quantity, quality and description of the Goods and any specification for them will be as set out in the Quotation (if accepted by the Buyer) or the Order (if accepted by Brand Energy & Infrastructure Services UK, Ltd.).
- 2.4. Except for any representation set out in the Product Literature, Brand Energy & Infrastructure Services UK, Ltd's employees or agents are not authorised to make any representations concerning the Goods. In entering into the Contract, the Buyer acknowledges that it did not rely on any representations which are not set out in the Product Literature (at the time the Contract came into existence).
- 2.5. Unless otherwise specifically agreed to in writing by Brand Energy & Infrastructure Services UK, Ltd., all samples, drawings, illustrations, descriptions or specifications of the Goods issued or published by Brand Energy & Infrastructure

Services UK, Ltd. (including any descriptions or illustrations of the Goods in any advertising material, catalogues, brochures or price lists) are for the sole purpose of giving the Buyer an approximate idea of the Goods and do not form part of the Contract.

2.6. The sale of the Goods will not be a sale by sample.

### **3. Quotations**

3.1. Unless otherwise stated in the Quotation, a Quotation -

3.1.1. is (subject to clause 3.1.2) open for acceptance for 28 days from the date on which it was given;

3.1.2. may be withdrawn at any time before acceptance by the Buyer;

3.1.3. is subject to the availability of the Goods at the time it is accepted by the Buyer; and

3.1.4. will only be regarded as having been accepted by the Buyer when Brand Energy & Infrastructure Services UK, Ltd. actually receives the Buyer's acceptance.

3.2. The acceptance by the Buyer of any oral quotation given by Brand Energy & Infrastructure Services UK, Ltd. for Brand Energy & Infrastructure Services UK, Ltd. to supply goods will be deemed to be an offer by the Buyer to Brand Energy & Infrastructure Services UK, Ltd. for Brand Energy & Infrastructure Services UK, Ltd. to supply goods (i.e. an Order) which Brand Energy & Infrastructure Services UK, Ltd. may in its discretion accept or reject.

### **4. Orders**

4.1. The Buyer shall be responsible for -

4.1.1. ensuring that the quantity, quality and description of the Goods (including any applicable specification for the Goods) is accurately set out in the Order; and

4.1.2. giving to Brand Energy & Infrastructure Services UK, Ltd. any necessary information relating to the Goods within sufficient time to enable Brand Energy & Infrastructure Services UK, Ltd. to perform the Contract in accordance with its terms.

4.2. No Order (which has been accepted by Brand Energy & Infrastructure Services UK, Ltd.) or Quotation (which has been accepted by the Buyer) (as the case may be) may be cancelled by the Buyer except with the written agreement of Brand Energy & Infrastructure Services UK, Ltd. and on terms that the Buyer shall indemnify Brand Energy & Infrastructure Services UK, Ltd. in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Brand Energy & Infrastructure Services UK, Ltd. as a result of the cancellation.

### **5. Specifications**

5.1. If the Goods are to be supplied or any process is to be applied to them Brand Energy & Infrastructure Services UK, Ltd. in accordance with a drawing, design, specification or instruction submitted by the Buyer, the Buyer shall be responsible for ensuring that -

5.1.1. the drawing, design, specification or instruction is accurate and sufficient to enable Brand Energy & Infrastructure Services UK, Ltd. to perform its obligations in terms of the Contract; and

5.1.2. the Goods supplied or to which the process is applied will be fit for the purpose for which the Buyer intends to use them.

5.2. The Buyer shall indemnify Brand Energy & Infrastructure Services UK, Ltd. against all loss, damages, costs and expenses awarded against, incurred, paid or agreed to be paid by Brand Energy & Infrastructure Services UK, Ltd. in connection with -

5.2.1. any infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which arises out of Brand Energy & Infrastructure Services UK, Ltd's use of any drawing, design, specification or instruction submitted to Brand Energy & Infrastructure Services UK, Ltd. by the Buyer; and

5.2.2. any defect in the Goods which arises from any drawing, design, specification or instruction submitted to Brand Energy & Infrastructure Services UK, Ltd. by the Buyer.

5.3. Brand Energy & Infrastructure Services UK, Ltd. reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements or do not materially affect their quality or performance.

### **6. Price of the Goods**

6.1. The price of the Goods will be Brand Energy & Infrastructure Services UK, Ltd's quoted price or, where no price has been quoted, the price listed in Brand Energy & Infrastructure Services UK, Ltd's published price list current at the date of acceptance of the Order.

6.2. Prices quoted orally are only valid on the day on which they are quoted.

6.3. Brand Energy & Infrastructure Services UK, Ltd. reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to Brand Energy & Infrastructure Services UK, Ltd. which is due to -

6.3.1. any factor beyond the control of Brand Energy & Infrastructure Services UK, Ltd. (including any foreign exchange fluctuation, currency regulation, alteration of duties, any increase in the costs of labour, materials or other costs of supply or any increase in the costs of sourcing the Goods);

6.3.2. any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer; or

6.3.3. any delay or expense caused by any instructions of the Buyer or failure of the Buyer to give Brand Energy & Infrastructure Services UK, Ltd. adequate information or instructions.

6.4. Except as otherwise stated in the Quotation or in the relevant price list of Brand Energy & Infrastructure Services UK, Ltd.

- (as the case may be), all prices given by Brand Energy & Infrastructure Services UK, Ltd. are on an ex works basis.
- 6.5. If Brand Energy & Infrastructure Services UK, Ltd. agrees to deliver the Goods otherwise than at Brand Energy & Infrastructure Services UK, Ltd's premises, the Buyer shall be liable to pay Brand Energy & Infrastructure Services UK, Ltd's charges for transport, packaging and insurance.
- 6.6. The prices are exclusive of any applicable value added tax, which the Buyer shall pay to Brand Energy & Infrastructure Services UK, Ltd. when it pays for the Goods.
- 6.7. The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods. However, if the pallets and returnable containers are returned undamaged to Brand Energy & Infrastructure Services UK, Ltd. within 15 Business Days of the delivery of the Goods, Brand Energy & Infrastructure Services UK, Ltd. will give the Buyer a full credit against the charge.
- 7. Terms of payment**
- 7.1. Brand Energy & Infrastructure Services UK, Ltd. may invoice the Buyer for the Price -
- 7.1.1. on or at any time after delivery of the Goods; and
- 7.1.2. in the case of the Buyer failing to give Brand Energy & Infrastructure Services UK, Ltd. adequate delivery instructions or wrongfully failing to take delivery of the Goods, on or at any time after Brand Energy & Infrastructure Services UK, Ltd. tenders delivery of the Goods.
- 7.2. Subject to clause 8, the Buyer shall pay the Price (in cleared funds) on receipt of Brand Energy & Infrastructure Services UK, Ltd's invoice in respect of the Goods.
- 7.3. Brand Energy & Infrastructure Services UK, Ltd. may recover the Price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer.
- 7.4. The time for payment of the Price is of the essence of the Contract.
- 7.5. Receipts for payment will be issued only on request.
- 7.6. The Buyer shall make all payments due under the Contract in full and without any deduction whether by way of set-off (including equitable set-off), counterclaim, discount, abatement or otherwise.
- 8. Credit**
- 8.1. If Brand Energy & Infrastructure Services UK, Ltd. has in writing agreed to grant the Buyer credit in relation to any amount due to Brand Energy & Infrastructure Services UK, Ltd. under the Contract, the Buyer shall pay the Price within 30 days of the date of Brand Energy & Infrastructure Services UK, Ltd. invoice in respect of the Goods.
- 8.2. The Buyer accepts that Brand Energy & Infrastructure Services UK, Ltd. may in its discretion at any time and from time to time -
- 8.2.1. review the basis for granting the Buyer credit; and
- 8.2.2. withdraw or reduce the amount of credit granted to the Buyer.
- 8.3. If at any time the amount due by the Buyer to Brand Energy & Infrastructure Services UK, Ltd. (whether under the Contract or on any account) is in excess of the Buyer's credit limit, the Buyer shall immediately pay to Brand Energy & Infrastructure Services UK, Ltd. such amount as will bring the Buyer within its credit limit.
- 8.4. The provisions of clause 15.2.5 will mutatis mutandis (i.e. with the necessary changes) apply to any amount the Buyer is required to pay under clause 8.3 and fails to pay.
- 8.5. The Buyer authorises Brand Energy & Infrastructure Services UK, Ltd. to carry out checks on the Buyer with credit reference agencies and at any time and from time to time provide the agencies with information as to the manner in which the Buyer conducts its account with Brand Energy & Infrastructure Services UK, Ltd. The Buyer acknowledges that the agencies concerned may share this information with other credit reference agencies and businesses conducting credit or fraud prevention checks on the Buyer.
- 9. Discounts**
- 9.1. Any discount, rebate or the like which Brand Energy & Infrastructure Services UK, Ltd. gives to the Buyer on the price of the Goods is given on the basis that -
- 9.1.1. the Buyer will pay all amounts due to Brand Energy & Infrastructure Services UK, Ltd. in terms of the Contract on their due date; and
- 9.1.2. if the Buyer fails to comply with the provisions of clause 9.1.1, Brand Energy & Infrastructure Services UK, Ltd. may invoice the Buyer for and immediately recover from the Buyer the Brand Energy & Infrastructure Services UK, Ltd's published price list current at the date the Contract comes into existence.
- 10. Delivery**
- 10.1. Delivery of the Goods will be made by making the Goods available at the Delivery Address on the Delivery Date.
- 10.2. Where the Delivery Address is other than at Brand Energy & Infrastructure Services UK, Ltd's premises, the Goods will be delivered immediately prior to them being unloaded.
- 10.3. The Buyer shall (at its cost) provide adequate equipment and labour for -
- 10.3.1. the loading of Goods where the Delivery Address is at Brand Energy & Infrastructure Services UK, Ltd.'s premises; or
- 10.3.2. the unloading of Goods where the Delivery Address is other than at Brand Energy & Infrastructure Services UK, Ltd's premises.
- 10.4. The Delivery Date is approximate only and Brand Energy & Infrastructure Services UK, Ltd. will not be liable for any delay in delivery of the Goods however caused (including Brand Energy & Infrastructure Services UK, Ltd's negligence). Time for delivery is not of the essence of the Contract.

- 10.5. Brand Energy & Infrastructure Services UK, Ltd. may on reasonable notice to the Buyer deliver the Goods in advance of the Delivery Date.
- 10.6. Brand Energy & Infrastructure Services UK, Ltd. may deliver the Goods in instalments. Each instalment will constitute a separate contract and the termination of any one instalment by the Buyer as a result of a breach by Brand Energy & Infrastructure Services UK, Ltd. will not entitle the Buyer to terminate any other instalment or the Contract as a whole.
- 10.7. If Brand Energy & Infrastructure Services UK, Ltd. fails to deliver the Goods (or any instalment) for any reason (other than as a result of the Buyer's fault) and Brand Energy & Infrastructure Services UK, Ltd. is accordingly liable to the Buyer, Brand Energy & Infrastructure Services UK, Ltd. liability will be limited to the lower of –
- 10.7.1. the excess (if any) of the purchase price (in the cheapest available market) paid by the Buyer for similar goods to replace those not delivered over the price of the Goods not delivered; and
- 10.7.2. 5% of the price of the Goods not delivered.
- 10.8. If the Buyer fails to take delivery of the Goods or fails to give Brand Energy & Infrastructure Services UK, Ltd. adequate delivery instructions (including any documents, licences or authorisations necessary or required to deliver the Goods), Brand Energy & Infrastructure Services UK, Ltd. may –
- 10.8.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs of storage, insurance and re-delivery of the Goods; or
- 10.8.2. sell the Goods at the best price readily obtainable and after deducting the following amounts, account to the Buyer for the excess –
- 10.8.2.1. all reasonable storage, insurance and selling expenses;
- 10.8.2.2. the Price (or part of the Price) still outstanding; and
- 10.8.2.3. any other amounts due by the Buyer to Brand Energy & Infrastructure Services UK, Ltd., whether in terms of the Contract or on any other account whatsoever.

## **11. Acceptance of the Goods**

- 11.1. The Buyer shall within 3 Business Days of delivery of the Goods, notify Brand Energy & Infrastructure Services UK, Ltd. in writing of
- 11.1.1. any Goods missing on delivery; or
- 11.1.2. any defect in the Goods on delivery which was apparent on a reasonable inspection at the time of delivery.
- 11.2. If the Buyer fails to give Brand Energy & Infrastructure Services UK, Ltd. notice in terms of clause 11.1 of –
- 11.2.1. any missing Goods, the Goods as set out in Brand Energy & Infrastructure Services UK, Ltd's delivery documents will be deemed to have been duly delivered to the Buyer; and
- 11.2.2. any defective Goods, the Buyer will –
- 11.2.2.1. be deemed to have accepted the Goods and will not be entitled to reject them; and
- 11.2.2.2. be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.
- 11.3. Brand Energy & Infrastructure Services UK, Ltd's liability for any missing Goods in respect of which the Buyer has given notice in terms of clause 11.1 will be limited to replacing the Goods within a reasonable time or (at Brand Energy & Infrastructure Services UK, Ltd's discretion) issuing a credit note to the Buyer for the price of the Goods (or a proportionate part of the price) against any invoice raised for the Goods.

## **12. Risk and property**

- 12.1. Risk of damage to or loss of the Goods will pass to the Buyer –
- 12.1.1. on delivery of the Goods; and
- 12.1.2. in the case of the Buyer failing to give Brand Energy & Infrastructure Services UK, Ltd. adequate delivery instructions (including any documents, licences or authorisations necessary or required to deliver the Goods) or wrongfully failing to take delivery of the Goods, at the time Brand Energy & Infrastructure Services UK, Ltd. tenders delivery of the Goods.
- 12.2. Notwithstanding delivery and the passing of risk in the Goods, the property in the Goods will not pass to the Buyer until Brand Energy & Infrastructure Services UK, Ltd. has received in full (in cleared funds) all sums due to it in respect of the Goods and all other sums which are due by the Brand Energy & Infrastructure Services UK, Ltd. on any account.
- 12.3. Until such time as the property in the Goods passes to the Buyer, the Buyer shall –
- 12.3.1. maintain the Goods in a satisfactory condition;
- 12.3.2. hold the Goods as Brand Energy & Infrastructure Services UK, Ltd's bailee;
- 12.3.3. store the Goods (at no cost to Brand Energy & Infrastructure Services UK, Ltd.) separately from all other goods of the Buyer or any other person in such a way that they remain readily identifiable as Brand Energy & Infrastructure Services UK, Ltd's property;
- 12.3.4. keep the Goods insured on Brand Energy & Infrastructure Services UK, Ltd.'s behalf (and at no cost to Brand Energy & Infrastructure Services UK, Ltd.) for their full price against all risks to the reasonable satisfaction of Brand Energy & Infrastructure Services UK, Ltd. The Buyer shall on request produce the policy of insurance and proof of payment of the premium to Brand Energy & Infrastructure Services UK, Ltd.; and
- 12.3.5. not be entitled to pledge or in any way encumber or charge the Goods.
- 12.4. The Buyer may (subject to clause 12.5) resell the Goods before the property in the Goods has passed to it subject to any sale being –
- 12.4.1. in the ordinary course of the Buyer's business at full market value; and
- 12.4.2. a sale of Brand Energy & Infrastructure Services UK, Ltd's property on the Buyer's own behalf and the Buyer dealing as principal when making such a sale.
- 12.5. If a Default Event occurs before the property in the Goods has passed to the Buyer –
- 12.5.1. the Buyer's right to possession of and to resell the Goods will immediately terminate; and



- 12.5.2. Brand Energy & Infrastructure Services UK, Ltd. may immediately recover the Goods.
- 12.6. The Buyer grants Brand Energy & Infrastructure Services UK, Ltd., its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or (where the Buyer's right to possession has terminated) to recover them (with such transport and equipment as may be necessary).
- 12.7. Where Brand Energy & Infrastructure Services UK, Ltd. is unable to determine whether goods in the Buyer's possession are Goods in respect of which the property has not passed from Brand Energy & Infrastructure Services UK, Ltd. to the Buyer, Brand Energy & Infrastructure Services UK, Ltd. will be deemed to have sold to the Buyer all such goods of the kind sold by Brand Energy & Infrastructure Services UK, Ltd. to the Buyer (but only up to the quantity sold by Brand Energy & Infrastructure Services UK, Ltd. to the Buyer) in the reverse order in which they were invoiced by Brand Energy & Infrastructure Services UK, Ltd.

### **13. Warranties**

- 13.1. Brand Energy & Infrastructure Services UK, Ltd. warrants that upon delivery the Goods will -
- 13.1.1. comply with any description or specification of the Goods in the Contract; and
- 13.1.2. be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 13.2. Subject as expressly provided in the Terms, all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods (whether express or implied by statute or common law or otherwise) are excluded to the fullest extent permitted by law.
- 13.3. Brand Energy & Infrastructure Services UK, Ltd. will not be liable under the warranty in terms of clause 13.1 unless -
- 13.3.1. the Buyer gives Brand Energy & Infrastructure Services UK, Ltd. written notice of any defect in the Goods -
- 13.3.1.1. in accordance with the provisions of clause 11.1.2; or
- 13.3.1.2. where the defect was not apparent on a reasonable inspection at the time of delivery, within a reasonable time after the Buyer discovers the defect or ought to have discovered the defect but in any event within 12 months of the delivery of the Goods; and
- 13.3.2. Brand Energy & Infrastructure Services UK, Ltd. is given a reasonable opportunity (after receiving the notice referred to in clause 13.3.1) of examining the Goods (which may, at Brand Energy & Infrastructure Services UK, Ltd.'s request, include examining the Goods at Brand Energy & Infrastructure Services UK, Ltd.'s place of business).
- 13.4. The warranty in terms of clause 13.1 does not extend to parts, materials or equipment not manufactured Brand Energy & Infrastructure Services UK, Ltd.. Brand Energy & Infrastructure Services UK, Ltd.'s only liability in respect of such parts, materials or equipment shall be to transfer to the Buyer (subject to the provisions of clause 13.6) on the written request of the Buyer, such rights as Brand Energy & Infrastructure Services UK, Ltd. has and is entitled to transfer under any warranty or guarantee given by the manufacturer in respect of such parts, materials or equipment.
- 13.5. Brand Energy & Infrastructure Services UK, Ltd. will not be liable under the warranty in terms of clause 13.1 -
- 13.5.1. if the Buyer (or any other person) makes any use of the Goods after the Buyer has given Brand Energy & Infrastructure Services UK, Ltd. notice of any defect in the Goods;
- 13.5.2. in respect of any defect in the Goods arising from any drawing, design, specification or instruction supplied by the Buyer; or
- 13.5.3. in respect of any defect arising from the Goods being used or maintained otherwise than in accordance with the Product Literature.
- 13.6. Brand Energy & Infrastructure Services UK, Ltd. will not be liable under the warranty in terms of clause 13.1 and the Buyer will not be entitled to the benefit of any manufacturer's warranty or guarantee referred to in clause 13.4 if -
- 13.6.1. the Buyer fails or failed to pay to Brand Energy & Infrastructure Services UK, Ltd. the Price on its due date; or
- 13.6.2. the Buyer is in breach of the provisions of clause 14.4.2 and as a result of such breach Brand Energy & Infrastructure Services UK, Ltd. is unable to determine whether or not it supplied the goods or, if Brand Energy & Infrastructure Services UK, Ltd. did supply the Goods, when they were manufactured or supplied.
- 13.7. If Brand Energy & Infrastructure Services UK, Ltd. is liable under the warranty in terms of clause 13.1 (or any other warranty, guarantee or the like given by the Brand Energy and Infrastructure in respect of the Goods), Brand Energy & Infrastructure Services UK, Ltd.'s liability will be limited to repairing or replacing the Goods (or the defective part) or (at Brand Energy & Infrastructure Services UK, Ltd.'s discretion) refunding to the Buyer the Price (or a proportionate part of the Price).
- 13.8. Any Goods replaced will belong to Brand Energy & Infrastructure Services UK, Ltd. and any repaired or replacement Goods will be warranted mutatis mutandis (i.e. with the necessary changes) on the terms set out in this clause 13 save that the 12 month period referred to in clause 13.3.1.2 will be calculated from the date of delivery of the original Goods.

### **14. Product Literature and responsibility for the use of the Goods**

- 14.1. "Product Literature" means, in relation to the Goods concerned-
- 14.1.1. any representation, advice, instruction or recommendation given in writing by a director of Brand Energy & Infrastructure Services UK, Ltd., an employee of Brand Energy & Infrastructure Services UK, Ltd. holding the position of director (notwithstanding that such person may not be on the board of directors of Brand Energy & Infrastructure Services UK, Ltd.), or an employee of Brand Energy & Infrastructure Services UK, Ltd. holding the position of branch manager or above to the Buyer which is specific to the Goods (but only to the extent that it is not contrary to that contained in any subsequently issued or published guide referred to in clause 14.1.3;
- 14.1.2. any safety notices on the Goods or their packaging (but only to the extent that it is not contrary to that contained in any subsequently issued or published guide or notice referred to in clauses 14.1.3 or 14.1.4);
- 14.1.3. the most recent and generally available user guide (or part of a user guide) and safety guide (or part of a safety guide) from time to time issued or published by Brand Energy & Infrastructure Services UK, Ltd. which is

- specific to the Goods (but only to the extent that it is not contrary to any advice, instruction or recommendation in any subsequently issued or published notice referred to in clause 14.1.4); and
- 14.1.4. any notice which Brand Energy & Infrastructure Services UK, Ltd. from time to time issues or publishes and which can be accessed from the internet site [www.harsco-i.co.uk/legal](http://www.harsco-i.co.uk/legal)
- 14.2. Brand Energy & Infrastructure Services UK, Ltd. shall on the written request of the Buyer and the Buyer indicating the specific goods concerned, forward to the Buyer copies of the most recent guides or notices referred to in clauses 14.1.3 or 14.1.4 in relation to such goods.
- 14.3. The Buyer accepts that any notice referred to in clause 14.1.4 concerning the Goods, including any defect in the design or quality of the Goods which could affect the manner in which the Goods should be used or safely used, will be adequate and sufficient notice to the Buyer.
- 14.4. The Buyer shall ensure that –
- 14.4.1. any person using the Goods is made aware of and complies with the Product Literature (if any) and good trade practice; and
- 14.4.2. any numbers or distinguishing marks on the Goods are not removed, altered, defaced or otherwise tampered with.
- 14.5. Subject to clause 16.5, the Buyer shall indemnify Brand Energy & Infrastructure Services UK, Ltd. against all loss, damages, costs and expenses awarded against, incurred, paid or agreed to be paid by Brand Energy & Infrastructure Services UK, Ltd. in connection with any claim which arises out of –
- 14.5.1. the use of the Goods after the Buyer is aware or ought to be aware of any defect in the Goods;
- 14.5.2. any defect in the Goods arising from fair wear and tear, wilful damage, the negligence of any person (other than Brand Energy & Infrastructure Services UK, Ltd.), misuse, abnormal working conditions, or alteration or repair of the Goods without Brand Energy & Infrastructure Services UK, Ltd's prior written approval;
- 14.5.3. any use of the Goods (including the installation, disassembly, application, maintenance or removal of the Goods) other than in accordance with the Product Literature (if any) and good trade practice; or
- 14.5.4. the disposal of the Goods.
- 15. Default of the Buyer**
- 15.1. A "Default Event" will occur if any one or more of the following events occur –
- 15.1.1. the Buyer fails to pay any amount due to Brand Energy & Infrastructure Services UK, Ltd. in terms of the Contract on its due date or breaches any other provision of the Contract;
- 15.1.2. the Buyer fails to pay any amount due to Brand Energy & Infrastructure Services UK, Ltd. in terms of any other contract between Brand Energy & Infrastructure Services UK, Ltd. and the Buyer on its due date or breaches any other provision of any other contract between Brand Energy & Infrastructure Services UK, Ltd. and the Buyer;
- 15.1.3. the Buyer makes or threatens to make any voluntary arrangement with its creditors or becomes subject to any administration order or (being a company) goes into liquidation or (being an individual or firm) becomes bankrupt;
- 15.1.4. an encumbrancer takes possession, or a receiver, administrative receiver or administrator or any similar official is appointed in respect of the whole or any part of the assets of the Buyer,
- 15.1.5. any distress or execution is levied on the Buyer's property or assets;
- 15.1.6. the Buyer ceases, or threatens to cease, to carry on business;
- 15.1.7. anything analogous to any of the events specified in clauses 15.1.3 to 15.1.5 occurs under the laws of any applicable jurisdiction;
- 15.1.8. Brand Energy & Infrastructure Services UK, Ltd. reasonably apprehends that any of the events set out in 15.1.1 to 15.1.7 is about to occur in relation to the Buyer; or
- 15.1.9. any event set out in clauses 15.1.2 to 15.1.8 occurs in relation to any holding company of the Buyer or any subsidiary of any such holding company.
- 15.2. If a Default Event occurs, Brand Energy & Infrastructure Services UK, Ltd. may, without incurring any liability to the Buyer, take any one or more of the following actions -
- 15.2.1. suspend any further deliveries to the Buyer under the Contract (and any other contracts between Brand Energy & Infrastructure Services UK, Ltd. and the Buyer);
- 15.2.2. terminate the Contract;
- 15.2.3. declare all amounts due by the Buyer to Brand Energy & Infrastructure Services UK, Ltd. in terms of the Contract (and any other contracts between Brand Energy & Infrastructure Services UK, Ltd. and the Buyer) to be immediately due and payable;
- 15.2.4. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between Brand Energy & Infrastructure Services UK, Ltd. and the Buyer) as Brand Energy & Infrastructure Services UK, Ltd. may think fit (notwithstanding any purported appropriation by the Buyer); and
- 15.2.5. charge the Buyer interest on any amount unpaid (both before and after any judgment) –
- 15.2.5.1. calculated on a daily basis (and compounded monthly in arrear on the last day of each month) from its due date until it is paid in full at 4% per annum above the base rate from time to time of National Westminster Bank; or
- 15.2.5.2. (at Brand Energy & Infrastructure Services UK, Ltd's discretion) under the Late Payment of Commercial Debts (Interest) Act 1998.
- 15.3. The termination of the Contract will not affect and will be without prejudice to –
- 15.3.1. any rights which have accrued or any rights arising out of any breach giving rise to the termination; and
- 15.3.2. any provision which is expressly or by implication to operate after the termination of the Contract.

- 15.4. The provisions of clauses 5.2, 8, 9, 12.2 to 12.7, 14.5, 15.5 and 16 will survive the termination of the Contract.
- 15.5. The Buyer shall indemnify Brand Energy & Infrastructure Services UK, Ltd. against all costs and expenses incurred by Brand Energy & Infrastructure Services UK, Ltd. in enforcing any of its rights in terms of the Contract as against the Buyer and (where the Buyer's right to possession of the Goods has terminated in terms of clause 12.5) recovering the Goods.

## **16. Limitation of liability**

- 16.1. A "Liability Event" means -
- 16.1.1. any breach by Brand Energy & Infrastructure Services UK, Ltd. of any its obligations in terms of or arising out of the Contract;
  - 16.1.2. any liability Brand Energy & Infrastructure Services UK, Ltd. may have arising out of or in connection with the use or resale of the Goods by the Buyer (or any product incorporating the Goods); and
  - 16.1.3. any act or omission (including any tortious or negligent act or omission or any breach of statutory duty) by Brand Energy & Infrastructure Services UK, Ltd. or any of its employees, agents or sub-contractors arising out of or in connection with the Contract and as a result of which the Buyer suffers loss or damage.
- 16.2. Subject to the provisions of clauses 16.4 and 16.5 -
- 16.2.1. Brand Energy & Infrastructure Services UK, Ltd's liability to the Buyer in respect a Liability Event will be limited to an amount equal to the price of the Goods which are the subject matter of or give rise the claim; and
  - 16.2.2. Brand Energy & Infrastructure Services UK, Ltd. shall not be liable to the Buyer in respect of a Liability Event -
    - 16.2.2.1. for indirect or consequential loss or damage (whether direct or indirect, including loss or damage suffered by the Buyer as a result of an action brought by a third party, pure economic loss, loss of profit, loss of business or depletion of goodwill); and
    - 16.2.2.2. not previously satisfied or settled unless legal proceedings in respect of the Liability Event are commenced by being both issued and served within 18 months of the delivery of the Goods.
- 16.3. If a number of Liability Events give rise to substantially the same loss, they will be regarded as having arisen from a single Liability Event and will accordingly only give rise to one claim under the Contract.
- 16.4. The provisions of clause 16.2.1 are without prejudice to the provisions of clauses 10.7, 11.3 and 13.7.
- 16.5. Nothing in the Terms excludes or limits the liability of Brand Energy & Infrastructure Services UK, Ltd. to the Buyer for -
- 16.5.1. death or personal injury caused Brand Energy & Infrastructure Services UK, Ltd's negligence;
  - 16.5.2. any matter in which it would be illegal for Brand Energy & Infrastructure Services UK, Ltd. to exclude or attempt to exclude its liability; or
  - 16.5.3. fraud or fraudulent misrepresentation.

## **17. Force Majeure**

Brand Energy & Infrastructure Services UK, Ltd. will not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in terms of the Contract, if the delay or failure was due to any cause beyond its reasonable control including any act of God, fire, flood, accident, strike, lock-out, or other industrial dispute or action (of its own or other employees), power failure, mechanical failure, delay in transportation, inability to obtain raw materials or supplies of the Goods, act of government or state, requirement of any governmental or local authority, war, civil commotion, insurrection or embargo.

## **18. Export terms**

- 18.1. Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 18 will (subject to any special terms agreed in writing between Brand Energy & Infrastructure Services UK, Ltd. and the Buyer) apply notwithstanding any other provision of this document.
- 18.2. The Buyer 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.
- 18.3. Unless otherwise agreed in writing between Brand Energy & Infrastructure Services UK, Ltd. and the Buyer -
- 18.3.1. the Goods will be delivered Ex Works (as defined in Incoterms);
  - 18.3.2. Brand Energy & Infrastructure Services UK, Ltd. will be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979;
  - 18.3.3. payment of all amounts due to Brand Energy & Infrastructure Services UK, Ltd. will be made by irrevocable letter of credit opened by the Buyer in favour of Brand Energy and Infrastructure and confirmed by a bank in England acceptable to Brand Energy & Infrastructure Services UK, Ltd.; and
  - 18.3.4. the Buyer shall be responsible for arranging inspection of the Goods immediately prior to delivery.
  - 18.3.5. Brand Energy & Infrastructure Services UK, Ltd. will have no liability for any claim in respect of any defect in the Goods which would be apparent on an inspection on delivery.
- 18.4. The Buyer shall not -
- 18.4.1. offer the Goods for resale in any country in which it would be illegal in the United States of America or England for an American or English corporation to sell the Goods; or
  - 18.4.2. sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

## **19. Consumers**

- 19.1. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) or otherwise to a Consumer, the statutory rights of the Buyer are not affected by the Terms.
- 19.2. Furthermore, in relation to any Contract where the Buyer is a Consumer, the Terms will be varied to the extent necessary (but no more) for them to comply with any applicable consumer legislation and regulations.

**20. Authorised Brand Energy & Infrastructure Services UK, Ltd. persons**

20.1. Where the Terms provide for certain matters to be agreed in writing between Brand Energy and Infrastructure and the Buyer or Brand Energy & Infrastructure Services UK, Ltd. providing its written consent or approval, the agreement, consent or approval will be of no effect unless it is signed on Brand Energy & Infrastructure Services UK, Ltd's behalf by a director of Brand Energy & Infrastructure Services UK, Ltd. or an employee of Brand Energy & Infrastructure Services UK, Ltd. holding the position of branch manager or above.

**21. Notices**

- 21.1. Any notice required to be given by the Buyer to Brand Energy & Infrastructure Services UK, Ltd. must be sent –
- 21.1.1. in the case of the Contract coming into existence on the acceptance by the Buyer of the Quotation and subject to clause 21.1.3, to Brand Energy & Infrastructure Services UK, Ltd's business address as set out in the Quotation; or
  - 21.1.2. in the case of the Contract coming into existence on the acceptance by the Brand Energy & Infrastructure Services UK, Ltd. of the Order and subject to clause 21.1.3, to Building 100, Relay Point, Relay Drive, Tamworth, Staffordshire, England B77 5PA; or
  - 21.1.3. to such changed address as Brand Energy & Infrastructure Services UK, Ltd. may notify to the Buyer in writing from time to time.
- 21.2. Any notice required to be given by Brand Energy & Infrastructure Services UK, Ltd. to the Buyer must be sent –
- 21.2.1. in the case of the Contract coming into existence on the acceptance by the Buyer of the Quotation and subject to clause 21.2.3. to the address of the Buyer as set out in the Quotation;
  - 21.2.2. in the case of the Contract coming into existence on the acceptance by the Brand Energy & Infrastructure Services UK, Ltd. of the Order and subject to clause 21.2.3, to the Buyer's business address as set out in the Order; and
  - 21.2.3. to such changed address as the Buyer may notify to Brand Energy & Infrastructure Services UK, Ltd. in writing from time to time.
- 21.3. A notice to the Buyer at its address referred to in clause 21.2 will be deemed to have been received by the Buyer –
- 21.3.1. if delivered by hand, at the time of delivery;
  - 21.3.2. if sent by pre-paid first class post, 2 Business Days after posting (exclusive of the day of posting);
  - 21.3.3. if sent by facsimile, on Brand Energy & Infrastructure Services UK, Ltd. receiving a successful transmission report.
- 21.4. A notice actually received by the Buyer will be regarded as effective, notwithstanding that it was not delivered or sent to the Buyer at its address referred to in clause 21.2.

**22. Assignment and sub-contracting**

- 22.1. The Buyer may not transfer any of its rights under the Contract to any other person without the prior written consent of Brand Energy & Infrastructure Services UK, Ltd..
- 22.2. Brand Energy & Infrastructure Services UK, Ltd. may on notice to the Buyer transfer any or all of its rights or obligations under the Contract to any other person.
- 22.3. Brand Energy & Infrastructure Services UK, Ltd. may sub-contract any of its obligations under the Contract.

**23. Third Party Rights**

A person who is not a party to the Contract will not acquire any rights under the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.

**24. Rights Cumulative**

Each right or remedy of Brand Energy & Infrastructure Services UK, Ltd. under the Contract is without prejudice to any other right or remedy of Brand Energy & Infrastructure Services UK, Ltd. whether under the Contract or in law or equity.

**25. Waiver**

The failure or delay by Brand Energy & Infrastructure Services UK, Ltd. to exercise any of its rights under the Contract will not operate as a waiver or variation of that or any other right and any defective or partial exercise of any right will not preclude Brand Energy & Infrastructure Services UK, Ltd. from exercising that or any other right.

**26. Severability**

If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision concerned will not be affected.

**27. Proper Law**

The Contract will be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.