



## **STANDARD TERMS AND CONDITIONS**

### **1 Parties to this Agreement**

- 1 In these conditions ("these Conditions") WPS means Wilson Power Solutions Limited and "Customer" means the person entering into the contract with WPS. These conditions extend to the supply of services as well as equipment and, in particular, apply to contract works executed away from WPS's premises whether on the Customer's own site or elsewhere. Accordingly reference herein to "Goods" should be understood, where applicable, to include the provision of work and materials and the Conditions should be read and construed accordingly.

### **2 General**

- 1 Acceptance of WPS's quotation will be deemed to bind the Buyer to these terms and conditions and no goods or services shall be supplied except in accordance herewith. In the case of any conflict between these conditions and those of the Customer, these conditions will prevail.
- 2 No other agreement, representation, promise, undertaking or understanding of any kind unless expressly confirmed in writing by an authorised representative of WPS shall add, vary or waive any of these Conditions.
- 3 The Customer's purchase order (in whatever manner communicated) is an offer to enter into a contract for the purchase or hire of goods or services as the case may be upon these terms and conditions. Acceptance occurs and the contract is formed only upon WPS issuing an order confirmation. Any terms or conditions proffered at any time by the Customer are hereby excluded.

### **3 Limits of Contract**

- 1 All offers are made subject to acceptance by the Customer within 30 days of the date of WPS's quotation (unless otherwise stated) and subject to the goods being unsold and/or not withdrawn prior to acceptance. All goods and/or electrical equipment are liable to be withdrawn without notice.
- 2 All quotations relate only to such Goods as are specified therein. Drawings dimensions and weights submitted must be taken to be approximate and do not form part of the Contract. All extras and accessories ordered but not specified in WPS's quotation will be charged for separately as will the costs of alterations, additions and other work undertaken at the expense of the Customer.
- 3 The acceptance of WPS's quotation must be accompanied by sufficient information to enable WPS to proceed with the order forthwith otherwise WPS shall be at liberty to amend the price(s) to cover any increased costs in labour or materials which may take their place after the issue of WPS's order confirmation. Any sample submitted to the Customer and not returned to WPS's works within one month from the date of receipt shall be paid for by the Customer.
- 4 The Customer shall not assign or transfer its rights under any contract subject to these conditions to any third party without prior consent in writing of WPS.
- 5 WPS will make every effort to execute all orders at the price indicated on WPS's quotation (subject to clause 3(3) above) (the Quotation Price) but reserves the right to raise the Quotation Price in the event of any increase in WPS's costs that may take place between the date of acceptance of WPS's quotation and the date such Goods are ready for delivery.
- 6 Unless otherwise agreed in writing by WPS the offer includes up to two sets of as made drawings produced for the manufacture of the new equipment.
- 7 WPS's products are carefully inspected and submitted to standard tests (as outlined in WPS's quotation) at its Works before despatch. If additional tests are required or if the Customer requires that any test to which the goods are to be subjected take place in the presence of the Customer or its representative, WPS reserve the right to charge an additional fee. If requested by the Customer WPS shall give the Customer seven days notice of when any tests are due to take place on the goods. In the event of the failure of the Customer or its representative attending at the date and time specified by WPS the tests shall proceed in the Customer's absence entirely without prejudice to the additional fee that may be payable in respect of those tests.



#### **4 Price and Delivery**

- 1 Except where otherwise stated Goods are offered ex-works.
- 2 Goods sold loaded at side will be despatched according to the Customer's instructions and shall be deemed to be at the Customer's risk from the time of loading.
- 3 Goods sold delivered (rather than ex-works) will be despatched by any means of transport at WPS's option unless otherwise agreed in writing. All unloading and demurrage charges which may be incurred will be charged to the Customer. It is an implied condition that where WPS sell Goods delivered to the Customer's premises or site that adequate facilities exist for so doing by road and/or rail and for unloading.
- 4 Any packing or protection shall be at the discretion of WPS. All such packing will be charged to the Customer unless it is specifically included in the quoted price. .
- 5 All prices quoted are ex-works unless otherwise specified in WPS's quotation.
- 6 Where Goods are exported outside the mainland of Great Britain the WPS will supply the Goods either FOB or CIF as set out in WPS's quotation. The Customer shall be responsible for obtaining all licences, permits and approvals which are necessary for the exportation and/or importation of the Goods and shall also be responsible to the payment of any export, import, sales or other local taxes or duties.

#### **5 Time for Delivery**

- 1 Delivery times where given will be approximate and date from the confirmation of the order by WPS. Under no circumstances shall delivery times be or be capable of being made of the essence of the contract. 2 WPS shall use its reasonable endeavours to deliver the Goods by the stated delivery date, but shall not be liable for any loss whatsoever in the event of late delivery or non-delivery of Goods. The Customer shall not be entitled to refuse to accept late delivery or treat late delivery as a breach of contract.
- 3 WPS may at its option deliver by instalments in which case each instalment shall constitute a separate contract on these terms and conditions. Default in delivery or defect in any one such instalment shall not entitle the Customer to repudiate the contract nor to cancel subsequent instalments.
- 4 Where Goods are being sold subject to payment terms as set out in Clause 12 (1) (a) If WPS does not receive payment of the offer price (or relevant part thereof) within 14 days of notification that the Goods are available for despatch WPS shall be at liberty to arrange storage either at WPS's premises or elsewhere at the Customer's risk and charge for storage, insurance and demurrage at the rate of 2% of offer price per month from the date of notification that the equipment is available for despatch until actual despatch.
- 5 If the Customer has failed to collect the goods on the expiry of the seventh day following notification of readiness for collection or has failed to take delivery, the WPS shall be entitled to treat the contract as repudiated by the Customer. Until the contract is so terminated the WPS may, at its option, either store the Goods itself or have them stored by third parties on such terms as it in its absolute discretion thinks fit. The cost of storage and any additional transportation will be added to and form part of the price. If WPS elects to treat the contract as repudiated in accordance with this term it shall (without prejudice to its rights and remedies in respect of such repudiation) be entitled to sell the Goods and retain the proceeds of the sale and to claim from the Customer any shortfall between such proceeds of sale and the price which should have been payable by the Customer.

#### **6 Loss or Damage in Transit**

- 1 Where the Goods are being supplied ex-works WPS shall have no liability for goods lost or damaged in transit and it shall be the Customer's responsibility to insure the goods against such risks. Where the Goods are being supplied other than ex-works then in the event of loss or damage in transit from any cause whatsoever (including causes which might be held to involve fundamental breach of contract) the liability of WPS shall be limited (at WPS's option) to replacing, repairing the Goods or electrical equipment or refunding the purchase money.



- 2 WPS shall not be liable for any such damage as is referred to in paragraph 6 (1) above unless WPS and the carriers are notified of such damage or loss within 7 days of delivery. It is the responsibility of the Customer to examine the Goods immediately upon receipt.
- 7 Guarantee**
  - 1 WPS warrants that the Goods shall be of satisfactory quality and shall conform to the specification agreed between the parties in all respects.
  - 2 WPS does not warrant that the Goods shall be fit for the Customer's purpose and the Customer must satisfy itself that the Goods will meet its requirements.
  - 3 WPS warrants that the Goods shall be free from defects or defective workmanship for a period of 24 months from delivery for refurbished transformers, 24 months from delivery for new transformers and 12 months from delivery for battery tripping units and switchgear unless agreed otherwise.
  - 4 In the event that a defect in the Goods is discovered within the warranty period the Customer must notify WPS within 7 days of the defect becoming apparent and WPS shall, at its option, either repair, or replace the Goods in question or refund the Customer the purchase price paid for the defective Goods in question.
  - 5 If WPS gives an extended warranty to the Customer in respect of the Goods then in the event that a defect in the Goods is discovered within the extended warranty period the Customer must notify the WPS within 7 days of the defect becoming apparent and WPS shall, at its option, either repair or replace the Goods in question or refund the purchase price paid for the defective Goods in question on a pro rata basis to the life achieved by the said Goods. e.g. in the case Goods which last for 85% of their warranted life a refund of 15% will be paid.
  - 6 WPS's liability under the warranty applies only to defects appearing before the Customer makes any modification or alteration to the Goods and whilst the goods are being properly stored in accordance with any instructions given by WPS. In particular (but without limitation) WPS shall not be liable for any defects arising from normal wear and tear or improper or faulty handling, operation or processing by the Customer or any third party or in the event that the seal fitted to the lid of a transformer is broken.
  - 7 The Warranty does not extend to materials or components forming part of the goods which are not of WPS's manufacture. In respect of such items the Customer shall be entitled only to the benefit of any manufacturers warranty or guarantee the benefit of which WPS is able to obtain
- 8 Limitation of Liability**
  - 1 Nothing in these terms and conditions shall limit or exclude WPS' liability for:
    - a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
    - b) fraud or fraudulent misrepresentation;
    - c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
    - d) defective products under the Consumer Protection Act 1987; or
    - e) any matter in respect of which it would be unlawful for WPS to exclude or restrict liability.
  - 2 Subject to sub-clause 1 above:
    - a) WPS shall not be liable to the Customer, whether in contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise, for the following losses whether direct or indirect:
      - i. loss of profit or anticipated profit;
      - ii. loss of business or business interruption;
      - iii. loss of opportunity;
      - iv. loss of goodwill;
      - v. loss of operation time;
      - vi. wasted expenditure;
      - vii. management or staff time;
      - viii. loss of reputation; and/or
      - ix. loss of data;



- b) WPS will not be liable in respect of any loss or damage whatsoever or howsoever caused or arising and suffered and incurred by the Customer to the extent that such loss or damage is caused by the act or omission in breach of these terms and conditions by or the negligence of the Customer or any agent or employee of the Customer; and
- c) WPS' total liability to the Customer in respect of all other losses arising under or in connection with the supply of the Goods, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

## **9 Plant on Hire**

- 1 Hired equipment is subject to the Contract Plant and Hire Association's ("CPA") terms of hire which form part of these Terms and Conditions a copy of which can be found on WPS's website.
- 2 Goods supplied to the Customer on hire shall be the Customer's responsibility and at the Customer's risk from the time of leaving WPS's works or any other place until returned by the Customer.
- 3 The Customer is responsible for insuring the Goods and WPS have the right to require the Customer to provide proof of such insurance and/or inspect the insurance policy if it so wishes. The Customer undertakes to return the Goods in the condition in which they were hired. The Customer shall keep the Goods in good or proper repair.
- 4 Subject to Clause 8.2 all expressed or implied terms, conditions and warranties as to the quality of the Goods are excluded and all liability for any expenses, damage, loss or injury howsoever arising (whether direct, indirect or consequential loss) is excluded save that if a defect occurs which would have been covered by the Guarantee in Clause 7, if Equipment had been purchased WPS agree to accept the return of the Equipment

## **10 Cancellation and Variation by the Customer**

- 1 Orders are not cancellable by the Buyer without express written agreement of a director or other authorised person on behalf of WPS and subject to Clause 10.2 below.
- 2 If WPS agrees to cancellation by the Customer, the Customer shall indemnify WPS in full against all expenses incurred up to the time of cancellation together with a reasonable amount by way of liquidated damages for breach of contract as specified by WPS, each sum being acknowledged by the Buyer as representing a genuine pre-estimate of WPS's loss of profit. WPS shall deliver to the Customer, and the Customer shall pay for, any goods that have been manufactured pursuant to the Customer's order prior to the time of cancellation.

## **11 Cancellation by WPS**

- 1 If, owing to hostilities (whether war has been declared or not), Governments restrictions, strikes, riots or civil commotion, difficulty or inability to obtain suitable raw materials, devaluation, major movements in international exchange rates, force majeure or causes of any other nature beyond WPS's reasonable control WPS decides it unreasonable or uneconomical to deliver the whole of any part of an order, WPS shall have the right on giving notice in writing to the Customer to cancel the order or any undelivered balance of the order.
- 2 Notice as aforesaid shall be deemed to have been received by the Customer 48 hours after the same has been posted in a first class prepaid ordinary letter addressed to the Customer as its last known address.
- 3 In the event of cancellation under this Clause the Customer shall not be entitled to make any claims arising from such cancellation other than a refund (without interest) of any advance payment made or a reasonable proportion thereof in respect of the cancellation of part of such order as the case may be.

## **12 Payment**

- 1 Unless otherwise agreed in writing the following terms will apply:
  - (a) Net cash with order; or
  - (b) In approved cases payment should be made within 30 days from the date of invoice.



- 2 The risk shall pass to the Buyers on despatch of the Goods and thereupon the Buyers shall be responsible for insurance.
- 3 Nevertheless, title to or ownership of the goods shall not pass (either legally or beneficially) until payment has been made in full for those Goods and for any account outstanding at the date when they were despatched. Such goods shall be kept safe and in good condition and stored separately and clearly identifiable as WPS's property and with all identifying marks intact and legible until full payment has been made. This Clause shall apply notwithstanding that the Goods have been made up or incorporated into other goods or otherwise procured or altered. In that case WPS shall be part owners of the composite goods in proportion to the price of their materials. Until title passes the Customer shall hold as bailees but may re-sell on condition that the proceeds (or that portion which is attributable to the Goods) are received on trust for WPS and placed in a separate bank account free from any lien or charge in favour of the bank or any other person.
- 4 WPS shall have a general lien on all goods and property of the Customer in its possession until payment is made in full and shall be entitled on the expiration of 14 days notice to enter the Customer's premises and to dispose of such goods or property as WPS thinks fit and apply any proceeds towards such debts.
- 5 No disputes as to quality or performance of the Goods or Services shall entitle the Customer to delay payment unless WPS shall agree in writing liability thereon in an agreed sum.
- 6 In the event of the Customer failing to comply with WPS's terms of payment WPS (without prejudice to any legal rights of action) reserve the right without notice to discontinue forthwith the provision to the Customer of any further Goods or Services.
- 7 When delivery of the Goods is made by instalments WPS may invoice the Customer for each instalment separately.
- 8 Any Wholesale and Quantity discounts afforded to the Customer will be recharged on overdue accounts together with interest at the rate of 2% above the base rate of Barclays Bank Plc per month on each overdue account outstanding.

### **13 Return**

- 1 Goods may only be returned with the prior arrangement in writing of WPS. Any Goods returned without the prior agreement of WPS will be returned to the Customer and a charge for handling (not exceeding 10% of the current selling price of the Goods) plus all carriage costs will be made.

### **14 Trademarks**

- 1 The Customer agrees not to remove, alter or deface or allow to be removed, altered or defaced, any marks, names or numbers affixed to the products and accessories purchased from WPS.

### **15 Goods Offered which are not WPS's Own Property**

- 1 Any information supplied by WPS concerning the location and other matters in respect of Goods and Equipment offered for sale by WPS but which are not WPS's property is given on the understanding that the Enquirer will not make a direct approach to purchase the Goods and Equipment through the Owners but will purchase them through WPS.
- 2 The Customer agrees not to make any direct approach to the true Owner and undertakes to reimburse WPS in respect of any loss of commission or other loss which may result to WPS as a breach of this Clause.

### **16 VAT**

- 1 All prices exclude VAT. Where applicable Value Added Tax will be added to invoices at the appropriate rate prevailing at the time of raising the invoice.

### **17 Survival of Provisions**



**WILSON**  
**POWER SOLUTIONS**

*Responsible Power Engineering*

- 1 The expiration or determination of this contract, howsoever arising, shall be without prejudice to any provisions of the contract (including these conditions) which are to have effect after the date of expiration or determination.

#### **18 Waiver**

- 1 No waiver by WPS or any breach or obligation of the Customer pursuant to this contract shall constitute a waiver of any other prior or subsequent breach or obligation.

#### **19 Notices**

- 1 All notices require to be given by the Customer to WPS in respect of the contract shall not be effective less in writing and sent to WPS at its registered office address.

#### **20 Headings**

- 1 The headings to these Conditions are for convenience of reference only and shall have no effect on the construction of the Conditions.

#### **21 English Law**

- 1 The construction, validity and performance of this Agreement shall be governed in all respects by English Law and all disputes and litigation arising in any way out of or affecting this Agreement shall be subject to the exclusive jurisdiction of the English courts.

Revision 6  
December 2012