

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. DEFINITIONS

In these Conditions:

you/your means the person, firm, company or other entity that purchases the Goods and/or Services from us;

us/we/our means **Fox Lux Limited**, incorporated and registered in England and Wales with company number 11821184 and having its registered office address at Alex House 260/8 Chapel Street, Salford, Manchester, M3 5JZ;

Conditions means these standard terms and conditions of supply;

Contract means any contract between you and us for the supply and purchase of Goods and/or Services;

Conversion Services means the modification of Deliverables according to the Contract;

Deliverables means only the items you supply to us that are to be modified by us through the Conversion Services and (where applicable) the items as so modified;

Goods means any goods which we agree in the Contract to supply to you (including any part or parts of them);

Party means you or us; and **Parties** refers to both you and us;

Relevant Period means five years from the date of manufacture for LED products and LiFePO₄ batteries and one year for all other products.

Services means any services which we agree in the Contract to supply to you; and **VAT** means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

2. APPLICATION OF CONDITIONS, DESCRIPTIONS AND VARIATIONS

2.1 Application of these Conditions. Subject to any variation agreed in accordance with Clause 2.2, every Contract will be subject to these Conditions and no other terms and conditions shall apply.

2.2 No variations. These Conditions apply to all supplies of Goods and/or provision of Services by us, and no variations to these Conditions or representations about the Goods and/or Services shall have any effect unless one of our directors or our company secretary expressly agrees otherwise in writing.

2.3 Entire agreement. The Contract constitutes the entire agreement between you and us, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter. Each Party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.

2.4 Validity of quotation. Any quotation given by us is only valid for a period of 30 days from its date of issue.

2.5 Acceptance of these Conditions. Every order for Goods and/or Services that we receive from you shall be deemed to be an offer by you to purchase Goods and/or be provided with Services subject to these Conditions.

2.6 Acceptance of your order. Orders placed by you shall not be deemed to have been accepted by us unless and until we accept your order by issuing a written order acknowledgement, or we deliver some or all of the Goods or start to perform any of the Services which are the subject of the order.

2.7 Accuracy of your order. It is your responsibility to check that the terms of your order are accurate and complete.

2.8 Changes to Goods and Services. We reserve the right to make any changes to the Goods or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods or Services and/or Deliverables supplied, and we shall notify you in any such event.

2.9 Descriptions. All drawings, descriptions, specifications and advertising issued by us and any descriptions or illustrations contained on our website, in any brochure or in any other promotional literature that we publish, are issued or published to provide an indication only of the goods or services that they describe, and may be subject to change.

3. PAYMENT

3.1 Credit accounts. Credit accounts may be opened, subject to satisfactory credit references being obtained and at our sole discretion. We reserve the right to vary or withdraw the credit we extend to you at any time.

3.2 Price of Goods. Unless otherwise agreed by us in writing, the price for the Goods shall be the price set out in the Contract or, if no price is stated in the Contract, the price set out in our standard price list as at the date of delivery. Unless otherwise agreed by us in writing, the price for the Goods does not include the cost of delivery of the Goods or any other costs of postage, packaging, carriage, freight, handling charges or similar costs, and you will pay or reimburse us for any such costs incurred.

3.3 Fees etc for Services. The fees for our Services shall be the amount set out in our written acknowledgement of your order. Further, we shall be entitled to charge you for the cost of any materials reasonably required for the performance of the Services or the cost of having the components required for the Deliverables delivered to us. Unless otherwise agreed by us in writing, the price for the Services does not include the cost of delivery of the resulting Deliverables to you or any other costs of postage, packaging, carriage, freight, handling charges or similar costs, and you will pay or reimburse us for any such costs incurred.

3.4 Currency of Payment. Unless otherwise agreed by us in the acknowledgment of

your order, the price for the Goods and Services shall be in pounds sterling (GBP). If you pay us in a currency other than GBP, in addition to the price you must also pay us any currency conversion charges incurred in converting the currency of your payment to GBP.

3.5 Increase in price and/or fees.

3.5.1 We reserve the right to increase the price of our Goods, by giving notice to you at any time before delivery, to reflect any increase in the cost of the Goods that is due to:

3.5.1.1 any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

3.5.1.2 any request by you to change the delivery date(s), quantities or types of Goods ordered, or the specification of the Goods; or

3.5.1.3 any delay caused by any instructions by you in respect of the Goods or failure to give us adequate or accurate information in respect of the Goods.

3.5.2 We also reserve the right to increase our fees for the Services and/or the cost of any materials reasonably required for the performance of the Services provided we give you written notice of any such increase at least 30 days before the proposed date of the increase.

3.6 VAT to be added. All sums payable under the Contract are exclusive of any applicable VAT, which, if applicable, you shall pay in addition at the prevailing rate required by law.

3.7 Time of payment. Time for payment shall be of the essence of the Contract. You shall pay invoices which we submit to you in full within 30 days of the date of our invoice. You will not be deemed to have settled our invoice until we have received cleared funds for the full amount due to us.

3.8 Delay in Payment. If there is a delay in payment to us then, in addition to any other right or remedy available to us, we may:

3.8.1 suspend performance of our obligations under the Contract; and/or

3.8.2 require you to pay interest on any amounts overdue at the rate from time to time prescribed by or pursuant to the Late Payment of Commercial Debts (Interest) Act 1998. The interest period shall run from the due date for payment until receipt of the full amount by us whether before or after judgment; and/or

3.8.3 recover from you the full costs and expenses we incur in obtaining payment.

3.9 No withholding. You shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

4. IMPORT LICENCES

You are responsible for obtaining, at your own cost, such import licences and other consents in relation to the Goods and Deliverables as are required from time to time and, if required by us, you shall make those licences and consents available to us prior to the relevant shipment. You will pay or reimburse us for any customs or import duties incurred by us as a result of delivering the Goods or Deliverables to you at an address or location outside of the UK.

5. DELIVERY

5.1 Time of delivery. Subject to our agreement in the acknowledgment of your order, we will use reasonable endeavours to deliver the Goods and Deliverables to the address specified in your order and the acknowledgment of that order, or as otherwise agreed in writing, by the date specified in the Contract.

5.2 Delay in delivery. Provided we use our reasonable endeavours to deliver the Goods and Deliverables by the date specified in the Contract, we will not be liable for any loss (including loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, or any indirect, special or consequential loss or damage (howsoever caused)), costs, damages, charges or expenses caused either directly or indirectly by any delay in the delivery of the Goods or Deliverables to you (even if such delay is caused by our negligence), nor will you be entitled to terminate the Contract because of any delay.

5.3 Failure to accept delivery. If you refuse to collect any of the Goods or Deliverables when we have informed you that they are ready for collection or, if we have agreed to deliver the Goods or Deliverables to you, you refuse to accept delivery, then we will return the applicable Goods or Deliverables to the stock held on our premises. In addition to any other right or remedy available to us, we may charge you an administration fee to cover the costs of carriage and re-stocking.

5.4 Delivery by instalments. We may deliver the Goods or Deliverables by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

5.5 Non-delivery. Our record of the quantity of any consignment of Goods or Deliverables despatched to you from our premises shall be conclusive evidence of the quantity received by you on delivery unless you can prove the contrary to our reasonable satisfaction. Our liability for failure to deliver Goods or Deliverables to you is limited to providing replacement Goods or Deliverables within a reasonable time of the date on which we receive written notice from you that the Goods or Deliverables have not been delivered, or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods or the applicable Services.

5.6 Goods damaged in transit. If we agree to deliver the Goods or Deliverables to you, we will repair or replace free of charge any Goods or Deliverables damaged in transit, provided we receive written notification of such damage within five days of the date of delivery. We may require you to prove that the Goods or Deliverables were damaged in

transit, which may require you to return the damaged Goods or Deliverables to us at your own risk and at your own expense.

6. RISK/TITLE

6.1 **Risk.** The Goods and Deliverables shall be at your risk from the time they are delivered to you by us at the place agreed in the order and acknowledgment of that order, loaded onto a carrier's transport for despatch to you, or collected by you or a carrier on your behalf from our premises or the place agreed in the order and acknowledgment of that order.

6.2 **Title.** Deliverables consisting of items supplied by us to you for the purposes of the Contract shall at all times remain your property. However, we shall have a lien over Deliverables for any sums that you may from time to time owe to us. When you have paid us in full for the Goods and have paid us any other amounts which are or which become owing by you to us on any account, you will become the owner of the Goods. Prior to that, the Goods shall remain our absolute property.

6.3 **Treatment of Goods pending title transfer.** Until you become the owner of the Goods, you must:

- 6.3.1 hold the Goods on a fiduciary basis as our bailee;
- 6.3.2 ensure that the Goods remain at all times readily identifiable as our property;
- 6.3.3 not destroy, deface or obscure any identifying mark on or relating to the Goods; and
- 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf.

6.4 **Resale of Goods pending title transfer.** You may resell the Goods before ownership has passed to you on the following conditions only:

- 6.4.1 any such sale shall be effected in the ordinary course of your business at full market value; and
- 6.4.2 any such sale shall be a sale of our property by you on your behalf and you shall deal as principal when making such a sale and not as our agent.

6.5 **Loss of right to possession of Goods.** Your right to possession of the Goods shall terminate immediately if circumstances arise that entitle us to terminate the Contract under Clause 9.1 (even if we do not exercise that entitlement).

6.6 **Inspection and recovery of Goods.** You grant to us and our 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 your right to possession has terminated, to recover them.

6.7 **Recovery of payment.** We shall be entitled to recover payment for the Goods and to be reimbursed by you for the cost of recovering the Goods from you, notwithstanding that we are still the owners of the Goods.

7. SUPPLY OF SERVICES

7.1 **Reasonable endeavours to provide by date specified.** We will use reasonable endeavours to meet any performance dates for the Services specified in the Contract or agreed by us in writing, but any such dates shall be estimates only.

7.2 **Your obligations in relation to the Services.** In order to enable us to provide the Services to you, you must co-operate with us in all matters relating to the Services, and in particular:

- 7.2.1 provide us with such information, and materials and access as we may reasonably require to supply the Services, and ensure that such information is accurate in all material respects; and
- 7.2.2 notify us in writing as soon as reasonably practicable, of any change(s) to the Services required, as a result of a change in specifications or instructions from you or any third party you are receiving instructions from in relation to the Deliverables.

8. WARRANTIES AND LIMITATIONS OF LIABILITY

8.1 **Warranties.** We warrant to you that:

- 8.1.1 any Goods manufactured by us (and registered by you as described in 8.1.6) will, with exception of those items in sub-clause 8.1.2, when stored and used in accordance with any applicable instructions, where the product has not exceeded the limits of temperature and voltage values as described in the installation instructions supplied with the product, perform in accordance with our published specification for the Relevant Period;
- 8.1.2 batteries supplied by us which are installed within the Goods will under normal usage and conditions, and where the product has not exceeded the limits of temperature or other electrical characteristics, continue to function for five years from the date of manufacture for LiFePO₄ batteries (one year for other batteries), unless expressly excluded;
- 8.1.3 Deliverables supplied by you will on completion of the Conversion Services perform in accordance with the terms of the original manufacturer's warranty in addition to performance resulting from our Conversion Services (we will warrant their performance as originally manufactured for the unexpired portion of the original manufacturer's warranty only), but only if the Deliverables were provided to us in good working order and the original manufacturer's warranty had not expired or been voided as at the date the Deliverables were supplied to us;
- 8.1.4 the components supplied by us, with exception of those items in sub-clause 8.1.2, that through the Conversion Services are included in the Deliverables will, when stored and used in accordance with any applicable instructions, perform in accordance with our published specification for the Relevant Period; and

8.1.5 the Services will be provided using reasonable care and skill.

8.1.6 The five year warranty is subject to registration of the installed Goods via our website (or by email to hello@fox-lux.co.uk). The address of installation and date of commissioning (in line with the applicable standards and legislation) must be noted along with the type and quantity of Goods. In the event that registration is not completed the warranty will revert to one year from date of delivery.

8.2 **No other warranties.** The warranties in Clause 8.1 are the only ones given by us in relation to the Goods and the Services, and all other representations and warranties, written or oral, express or implied (except the conditions which are implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are excluded to the fullest extent permitted by law.

8.3 **Remedies for breach of warranties.** Subject to Clause 8.6, if a breach of the warranties in sub-clauses 8.1.1 to 8.1.3 (inclusive) occurs within the Relevant Period you may seek a remedy from us according to this Clause 8.3. If you provide us with notice and satisfactory evidence of the breach (and, in the case of the warranty in Clause 8.1.3, evidence of the date the relevant component was manufactured and of the original manufacturer's warranty) within seven days of determining the breach we will at our option provide a credit note in respect of or replace the item in question, the cost of installing any replacement(s) being borne by you.

8.4 For breaches of the warranty in sub-clause 8.1.4, if you give us notice in writing within seven days of determining the breach, providing the date the Deliverables were delivered to you and satisfactory evidence of the breach of warranty, we will, at our option provide a credit note for the fees for the applicable Services, repair or replace the applicable Deliverables or re-perform the applicable Services.

8.5 If we decide to repair or replace an item under this Clause 8, we will require you to return the item to us at your own risk and at your own expense, to analyse and determine whether you have a valid claim for breach of warranty. If you do have such a valid claim, we will pay for the cost of delivering the repaired item or replacement to you. In the event of a replacement being supplied, such replacement will be warranted for the unexpired portion of the original warranty. If we comply with Clauses 8.3-8.5 as appropriate, we shall have no further liability to you in respect of the breach of warranty.

8.6 **Certain liability accepted.** These Conditions do not exclude or limit our liability for death or personal injury caused by our negligence or for fraudulent misrepresentation or other fraud, or for wilful default, or otherwise insofar as any exclusion or limitation of our liability is void, prohibited or unenforceable by law. All terms of the Contract that have the effect of excluding or limiting our liability shall be subject to this Clause 8.6.

8.7 **Exclusions and limitations.** Subject to Clause 8.6:

- 8.7.1 our total liability, in contract or tort or for any misrepresentation or otherwise, arising out of or in connection with the Contract, shall be limited to the amount paid by you for the Goods and Services supplied or to be supplied under the Contract; and
- 8.7.2 we shall not be liable to you, in contract or tort or for any misrepresentation or otherwise, for any loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, or any indirect, special or consequential loss or damage whatsoever (howsoever caused) which arise out of or in connection with the Contract.

9. TERMINATION

9.1 **Termination for cause.** Without affecting any other rights that it may be entitled to, either Party may give notice in writing to the other Party terminating the Contract with immediate effect if the other Party:

- 9.1.1 commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days of being notified in writing to do so; or
- 9.1.2 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or receiver is appointed over the assets of the other Party, or if the other Party makes or enters into any compromise or arrangement with its creditors (other than for the purpose of solvent amalgamation or reconstruction); or
- 9.1.3 suspends or ceases to carry on all or a substantial part of its business.

9.2 **Consequences of Termination.** On termination of the Contract for any reason:

- 9.2.1 you shall immediately pay us all of any outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has yet been submitted, we shall submit an invoice which you shall pay immediately on receipt;
- 9.2.2 the accrued rights and/or liabilities of either Party shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- 9.2.3 clauses which expressly or by implication need to survive termination in order to give effect to their terms, and in particular Clauses 3, 6, 8.1.1-8.1.6, 8.3-8.5, 10 and this Clause 9.2, shall continue in force after any termination.

10. GENERAL

10.1 **Interpretation of references.** In these Conditions: the headings (including those appearing at the beginning of any clause) shall not affect the interpretation of the Contract; references to clauses mean clauses of these Conditions; references to a person shall include an individual, a company or an unincorporated business or other body; all references to a statute are deemed to include any modification or re-enactment for the time being in force; references importing the singular include the plural and vice versa; words such as **in particular, including, for example, etc.**, shall not be construed as limiting in any way the scope of the corresponding more general wording; and a reference to **writing** or **written** includes faxes but not e-mail unless expressly provided to the contrary.

10.2 **Force majeure.** We reserve the right to defer the date of delivery of Goods, Services or

Deliverables or to cancel the Contract or reduce the volume of the Goods, Services or Deliverables to be supplied (without liability to you) if we are prevented from or delayed in the carrying on of our business as a result of circumstances beyond our reasonable control, including acts of God, fire, explosion, flood, epidemic, governmental actions, war or national emergency, riot, civil commotion, lock-outs, strikes or other labour disputes (whether or not relating to either Party's workforce), or any restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials experienced by us.

- 10.3 **Rights and remedies cumulative.** Each of our rights or remedies under the Contract is in addition to any other right or remedy that we may have.
- 10.4 **Severance.** If any provision of the Contract is found by any competent authority to be wholly or partly invalid or unenforceable it shall to the extent of such invalidity or unenforceability be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall not be affected and shall remain in full force and effect.
- 10.5 **Waiver.** Any failure or delay by us to enforce or partially enforce any provision of the Contract shall not be construed as a waiver of any of our rights under the Contract. Any waiver by us of any breach by you of any provision of the Contract shall not be deemed to be a waiver of any later breach or default and shall in no way affect the other terms of the Contract.
- 10.6 **Assignment and other dealings.** You shall not be entitled to assign, subcontract or transfer the whole or any part of the Contract without our prior written consent (which consent shall not unreasonably be withheld or delayed). We may assign, subcontract or transfer the Contract or any part of it to any person. The Contract shall bind and shall enure for the benefit of the permitted assignee of either Party.
- 10.7 **No Partnership or Agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute a Party, the agent or employee of the other Party, or authorise a Party to make or enter into any commitments for or on behalf of the other Party. The Parties are and shall remain independent contractors.
- 10.8 **Third party rights.** This Contract is not intended to benefit any third party and the provisions of The Contracts (Rights of Third Parties) Act 1999 are excluded.
- 10.9 **Notices.** All notices between the Parties about the Contract must be in writing and delivered by hand, sent by prepaid first-class "signed for" post or sent by e-mail. Notices addressed to us shall be marked for the attention of the Managing Director and shall be sent to our registered office address, the contact e-mail address published on our website, or such other address that we may publish or notify to you from time to time. Notices addressed to you shall be sent to your registered office or such other address as you notify to us from time to time. Notices shall be deemed to have been received:
 - 10.9.1 if sent by prepaid first-class "signed for" post, two days after posting (exclusive of the day of posting);
 - 10.9.2 if delivered by hand, on the day of delivery;
 - 10.9.3 if sent by e-mail transmission prior to 4.30 p.m. UK time on any day, at the time of transmission and if sent after 4.30 p.m. UK time, on the next day.
- 10.10 **Language.** This agreement is drafted in the English language. Any notice given under or in connection with this agreement shall be in English. All other documents provided under or in connection with this agreement shall be in English or accompanied by a certified English translation. The English language version of this agreement and any notice or other document relating to this agreement shall prevail if there is a conflict except where the document is a constitutional, statutory or other official document.
- 10.11 **Governing Law and Jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this agreement. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 10.12 It is your obligation to acquaint yourself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Goods or Deliverables. It is your obligation to ensure that no Goods or Deliverables are exported or imported in breach of the laws of any jurisdiction into or through which the Goods or Deliverables are transported during the course of reaching the delivery location. Where necessary, you shall inform us a reasonable time before delivery of any documents which it is necessary for us to provide in order to allow export of the Goods or Deliverables in compliance with the laws of any relevant jurisdiction.

Simon Fox
Managing Director
May 2019