# HybridGenerator ApS Terms & Conditions For The Sale of Goods

## 1 Definitions

| | |
|---|---|
| **Buyer** | means the person or company who buys or agrees to buy the Goods from the Seller as agreed in the Order Confirmation. |
| **Conditions** | means these terms and conditions for the Sale of Goods as set out in this document and any special terms and conditions agreed in writing by the Seller. |
| **Contract** | means the agreement made between the Seller and the Buyer related to the sale of the Goods including in hierarchical order: (1) the Order Confirmation, (2) these Conditions and (3), if any, technical specifications and other documentation |
| **Goods** | means the products and services which the Buyer agrees to buy from the Seller. |
| **Order Confirmation** | means the order confirmation of the Buyer's purchase order issued by the Seller to the Buyer comprising the Buyer's order of Goods under these Conditions. |
| **Party** | means either the Seller or the Buyer individually (as the context requires). |
| **Parties** | means the Seller and the Buyer, collectively. |
| **Price** | means the price for the Goods, excluding VAT and any carriage and insurance costs agreed in the Order Confirmation. |
| **Seller** | means HybridGenerator ApS, CVR No. 38496794, Nørrevang 15, 5792 Årslev, Denmark. |

## 2 Conditions

2.1 These Conditions shall govern the Contract between the Seller and the Buyer in relation to the sale of Goods, to the exclusion of all other terms and conditions including the Buyer's standard conditions of purchase or any other conditions which the Buyer may purport to apply under any purchase order or confirmation of order or any other document.

2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods from the Seller pursuant to these Conditions.

2.3 The Order Confirmation shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions and the Contract shall be binding between the Parties from the time of the Order Confirmation.

2.4 The Contract may not be varied except by the written agreement of a director of the Seller.

## 3 Price

3.1 The Price shall be the price agreed in the Order Confirmation. The Price is exclusive of V.A.T. and any kind of local taxes, duties and charges whatsoever.

## 4 Payment and Interest

4.1 Payment of the Price shall be due within 30 days from the date of the Seller's invoice.

4.2 Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of 8% per annum above the National Bank of Denmark base rate from time to time in force.

4.3 In the event of the Buyer's delay in payment in excess of 30 days beyond the terms provided in the Seller's invoice, the Seller has the right to suspend its performance of the Contract and any other contract between the Parties until the delayed payment has been received in full.

4.4 The Buyer shall pay all accounts in full and not exercise any rights of set-off or counterclaim against invoices submitted by the Seller.

## 5 Goods

5.1 The quantity and description of the Goods shall be as set out in the Order Confirmation.

## 6 Delivery of the Goods

6.1 Delivery of the Goods shall take place and risk in the Goods will pass in accordance with the Parties agreement in the Contract. Otherwise, delivery of the Goods shall be made Ex Works from the Sellers premises in accordance with Incoterms 2020.

6.2 The Sell shall endeavor to perform delivery of the Goods according to the delivery date(s) agreed in the Order Confirmation. However, the Buyer acknowledges and agrees that the delivery dates are estimates only that may not be obtainable and are subject to such changes as may be necessary or appropriate.

6.3 In case of delay in delivery, liquidated damages shall be applied amounting to 0,15% of the Price for each week up to a maximum of the 2,5% of the Price which shall be the sole remedy available to the Buyer in the event of delay.

## 7 Title and risk

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer in accordance with the agreed Incoterms 2020 or other agreement between the Parties in the Contract.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in and tittle to the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price.

7.3 Until such time as the property in and title to the Goods passes to the Buyer:

7.3.1 the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property;

7.3.2 the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether

tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and in the case of tangible proceeds, properly stored, protected and insured; and provided the Goods are still in existence and have not been resold, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.3.3 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all money owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 8 Warranties and defects

8.1 The Seller guarantees that the Goods will at the time of delivery correspond to the description given by the Seller in the Contract. However, the Seller does not warrant any specific performance, fit for purpose, savings, efficiency etc. and any statements of such shall not imply otherwise.

8.2 The Seller does not warrant or guarantee any specific compatibility with third-party products, and any compatibility can cease to exist if the third-party product is changed.

8.3 Except as otherwise agreed in the Order Confirmation, the guarantee shall expire 12 (twelve) months after the delivery of the Goods to the Buyer.

8.4 The Buyer shall notify the Seller of any defects without undue delay after the Buyer became aware of such defects.

8.5 Upon notification of any defects found, the Seller shall confirm the receipt of such notice and within reasonable time take necessary action to remedy the defects. The Seller shall, however, only be liable for defects which appear under the conditions of operation provided for in the Contract and under the Buyer's proper use and maintenance of the Goods. The Buyer shall be liable for all costs associated with the corrective action, transportation, and any dismantling and re-assembly costs.

8.6 The Seller shall, in its sole discretion, be entitled to remedy the defect by repair or replacement of the defective Goods. Such remedy shall take place within reasonable time after receipt of the above notification taking into account the nature and severity of the defect in question.

8.7 If defects are remedied by replacing an item or part of an item, a new 6-month guarantee period for such replaced items shall begin. However, in no event shall the extended guarantee period for the replaced items exceed the period in sub-clause 8.2 above.

## 9 Product liability

9.1 The Seller shall not be liable for any product liability claim arising from Goods if and to the extent any such claim relates to property damage, personal injury or is based on circumstances for which the Seller is not responsible for, including, but not limited to any defect not caused by the Seller, including but not limited to: (i) Buyer's or any third parties' failure to mount, install, operate or maintain the Goods, (ii) instructions from or changes requested by the Buyer, (iii) defects which could have been avoided with changes proposed by the Seller but rejected by the Buyer, (iv) the Goods' compatibility with other goods/products or parts thereof, (v) the Goods' functionality, fitness for a particular purpose,

use and similar or (vi) force majeure, cf. Clause 14. The Buyer shall indemnify the Seller from all claims, actions, proceedings, liability, damages, loss, costs, and expenses, including, but not limited to, reasonable attorney's fees, incurred by the Seller in connection with any product liability claim for which the Seller is not liable. The Parties shall notify each other without undue delay if any claim is made against a Party based on product liability.

9.2 The Seller shall secure and maintain insurance covering product liability (personal injury, death and property damage). Such insurance shall provide coverage amounting to EUR 1,000,000 per event and per year. The Seller shall upon request of the Buyer provide evidence of insurance coverage. The Seller's liability concerning product liability shall be limited to the insurance coverage (i.e. the Buyer must indemnify the Seller for all product liability forwarded against the Seller exceeding the sum insured, including but not limited all the Seller's costs and expenses related to such product liability claims).

9.3 Any limitations in this Clause regarding Sellers's liability for product liabilities are subject to applicable mandatory legislation.

## 10 Limitation of liability

10.1 The Seller's total aggregate liability under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise (including, but not limited to, liability arising out of or in relation to breach of contract, negligence, third party claims, infringements, product liability, termination and obligations to indemnify), shall not in any event exceed 50% (fifty percent) of the Price (VAT, taxes and/or other duties excluded) actually paid by the Buyer for the Goods or part thereof which forms the basis of Seller's liability.

## 11 Indirect or consequential losses

11.1 Notwithstanding anything contained in the Contract, the Seller will not in any event and regardless of the form or the cause or action, whether in contract, tort, under statute or otherwise (including, but not limited to, liability arising out of or in relation to breach of contract, negligence, third party claims, infringements, product liability, termination and obligations to indemnify) be liable to the Buyer for (i) loss of profit, loss of revenue, loss of energy, loss of production, loss of goodwill, loss of business, loss of opportunity, loss of any contract, loss of subsidies, the cost of obtaining any new financing or maintaining any existing financing or for any damages or indemnification losses arising from liabilities or indemnities under other agreements or contracts not applicable between the Parties, in each case whether direct or indirect and whether foreseeable at the time of formation of the C ontract or not, or (ii) for any indirect or consequential loss, cost or damage whatsoever, which may be suffered by the other Buyer under or in connection with the Contract.

## 12 Intellectual Property Rights

12.1 The Buyer acknowledges that the Seller retains ownership of the intellectual property rights of the Seller used or created under the Contract. To enable the Buyer to enjoy the benefit of the Goods in accordance with the Order Confirmation and these Conditions, the Seller grants to the Buyer a non-exclusive, non-transferable, royalty free, irrevocable and perpetual license to use such intellectual property rights for that purpose. However, the Buyer acknowledge and accepts that the Buyer shall not be allowed to use the Seller's intellectual property rights other than pursuant to the terms of the Order Confirmation and these Conditions or otherwise with the explicit prior written consent of the Seller. If the Buyer uses the Seller's intellectual property rights in any manner prohibited or otherwise not permitted

under the Order Confirmation and these Conditions, the Buyer shall be liable to the Seller in accordance with the Contract, these Conditions and applicable law.

12.2 If the Buyer is accused of infringement of any intellectual property rights by using the Goods, the Buyer shall notify the Seller as soon as possible. The Seller will indemnify buyer from any direct cost and damages awarded by final court ruling to be paid to such infringed third party, to the extent that the Seller is liable for such infringement. The Seller will furthermore at Sellers's option either replace or modify the infringing Goods, procure the necessary rights for the Buyer to still use the Goods or reimburse the Price for the infringing Goods. The above shall constitute the Buyers sole and exclusive remedy for any infringement of third-party rights and the Seller shall not be liable for any other loss, damage or consequential damage due to any such claim.

12.3 The Seller is not liable for any infringement caused by any design or requirements specified by the Buyer or the Buyers own use of the Goods together with other infringing products or outside the intended use of the Goods, and the Seller specifically disclaims any kind of warranty and liability for any possible patent infringement regarding any patent rights protected outside the EU.

12.4 All documents including drawings, descriptions, specifications, part lists etc. furnished at any time by the Seller, including any associated intellectual property, shall remain the property of the seller and neither said documents nor their contents shall in any way be used, made public or distributed to third parties without the Seller's express written consent for any purpose or audience other than that for which they were furnished.

## 13 Confidentiality

13.1 The Parties agrees and undertakes that during the term of this Contract and thereafter it will keep confidential and will not use for its own purposes nor without the prior written consent of the other Party disclose to any third party any information of a confidential nature which may become known to that Party from the other Party unless the information is public knowledge or already known to that Party at the time of disclosure or subsequently becomes public knowledge other than by breach of this Agreement or subsequently comes lawfully into the possession of that Party from a third party. Confidential Information means all information regarding the subject matter of the Agreement that: (i) if disclosed in tangible form, is marked as confidential, (ii) if disclosed in intangible form, is designated as confidential at the time of disclosure, or (iii) may reasonably be considered to be of a confidential nature. Confidential information furthermore includes, without limitation, customers, suppliers, products, services, source codes, object codes, test results, drawings, diagrams, specifications, models, designs, inventions, processes, methods, know-how, trade secrets, specifications, orders, order confirmations and the Agreement.

13.2 To the extent necessary to implement the provisions of this Contract, each Party may disclose confidential information to those of its employees and those employees of its affiliates as may be necessary in order to carry out the terms of this Contract provided that before any such disclosure each Party shall make those employees aware of its obligations of confidentiality under this Contract and shall at all times procure compliance by those employees with them.

## 14 Force majeure

14.1 Each of the Parties shall not be liable for failure of or delay in performance of its obligations under these Conditions or the Order Confirmation (other than for the payment of money) if such failure or delay is attributable to one of the following non-exhaustive circumstances if

such circumstance (i) prevents a Party performance under these Conditions or the Order Confirmation, (ii) is outside the control of the Party, and (iii) could not have been avoided by the Party: Any financial losses, damages, delays, nuisances and disturbances of operation which are the result of legislation, any action taken by governmental or public authorities, acts of war, acts of terrorism, strikes, blockades, lockouts, epidemics/pandemics, fire and natural catastrophes. In such case, the Party shall be entitled to postpone fulfilment of the obligation until the obstacle has ceased. Furthermore, bot Parties shall be entitled to terminate the Contract in full or in part without incurring any liability for this if the obstacle causes fulfilment to be postponed for more than three (3) months.

14.2 If the fulfilment of an obligation under these Conditions or the Order Confirmation is prevented or delayed due to reasons attributable to COVID-19, e.g. (but not limited to) delay in the delivery of generators, parts, components and/or materials from the Sellers subcontractors, restrictions imposed by governments or local authorities, infection or quarantine of the Seller's personnel or subcontractors, or any restriction affecting transport or logistics, such circumstances shall regardless of above mentioned conditions be considered a force majeure circumstance and the Seller shall be entitled to invoke its right according to Clause 14.1.

## 15 Governing law and venue

15.1 These Conditions, the Contract and any claim arising out of, or in connection with these Conditions, the Contract or any other agreement between the Parties shall be governed by and construed in accordance with Danish law, disregarding the Danish choice of law rules to the extent that such rules would otherwise lead to the application of any other law than Danish law.

15.2 Any dispute or claim which cannot be settled amicably between the Parties, shall be brought before the City Court of Odense, Denmark in the first instance.