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GENERAL TERMS AND CONDITIONS OF SALE FOR PRODUCTS

1 – GENERAL

The Proposal and any ensuing Contract shall be governed by the provisions of these General Terms and Conditions of Sale for Product (hereinafter called "GTC"). These GTC are exclusive of Buyer's own general conditions of purchase, and of any other document issued by Buyer which is not expressly agreed in writing by Seller. In the event of any conflict or discrepancy between these GTC and the provisions of the Proposal / Contract, the relevant provisions of the Proposal and/or the Contract shall prevail over these GTC.

The Proposal is subject to alteration and withdrawal by Seller at any time until any Contract is formed in accordance with these GTC. Unless withdrawn by Seller, the Proposal shall be valid for a period of three (3) months starting from the date of its issuance or for any other period specified in the Proposal.

For the interpretation of these GTC, and without prejudice to any other definition contained herein, the words listed below shall have the following meaning:

- **Affiliate** shall mean any company that is directly or indirectly controlling, controlled by, or under a common control with a Party; "control" means that at least fifty percent (50%) of the controlled company's shares or voting rights are directly or indirectly owned or controlled by the controlling company (a company shall be an Affiliated Company as long as a control exists).

- **Buyer** shall mean the legal entity(ies) purchasing the Product from Seller.

- **Contract** shall mean the Proposal accepted by Buyer, and any other document agreed in writing between the Parties during the negotiation of the Proposal, if any.

- **Party/ies** shall mean individually Seller or Buyer, and collectively Seller and Buyer.

- **Product** shall mean any hardware material and the associated documentation provided by Seller in accordance with the Contract.

- **Proposal** shall mean all documents submitted by Seller to Buyer together with these GTC.

- **Seller** shall mean AMPEGON POWER ELECTRONICS AG.

- **Software** shall mean any computer program embedded into any Product and the associated documentation provided by Seller in accordance with the Contract.

2 – DELIVERY AND TIME SCHEDULE

2.1 Delivery of the Product shall be made Free Carrier (FCA) in accordance with the Incoterms 2010 of the International Chamber of Commerce (publication n°715), unless otherwise indicated in the Proposal / Contract.

If the delivery of the Product is delayed or prevented for any reason beyond Seller's control, this Product shall be stored and the date of such storage shall be deemed to be the date of delivery. In such a case, Seller shall be entitled to issue a warehouse certificate which shall be validly used for payment purposes, and to be compensated for any storage costs.

2.2 The time schedule for the performance of either Party's obligations shall be computed from the date of coming into force of the Contract as indicated in clause 15.1 of these GTC.

3 – PRICES AND PAYMENTS TERMS

3.1 The price of the Product is quoted Free Carrier (FCA) in accordance with the Incoterms 2010 of the International Chamber of Commerce (publication n°715), unless otherwise indicated in the Proposal / Contract.

Prices for the Product have been computed free of VAT (Value Added Tax) and free of any tax, duty or any other charges outside of Seller's country which will be at the exclusive charge of Buyer as specified in clause 4 of these GTC.

Such prices are fixed and firmed during the period of validity of the Proposal / Contract, unless otherwise indicated in the Proposal / Contract.

3.2 All payments to be made by Buyer shall be made free of any deduction, withholding or set-off whatsoever to the bank account defined in Seller's invoice within a period of thirty (30) days from the date of such invoice, unless otherwise indicated in the Proposal / Contract.

The Swiss Franc (CHF) shall be the accounting, invoicing and payment currency, unless otherwise indicated in the Proposal / Contract.

Payment of the total Contract price shall be made in accordance with the payment terms defined in the Proposal / Contract.

For any payment to be made through documentary credit, the documentary credit shall be worded as per the model attached to the Proposal / Contract or as otherwise agreed between the Parties, shall be payable at sight and shall allow partial shipments and transshipments. All bank charges relating to said documentary credit shall be borne by Buyer. Such documentary credit shall be construed in accordance with the Uniform Customs and Practice for documentary credits of the International Chamber of Commerce (Publication No. 600 as of 2007 or latest update).

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In the event Buyer fails to pay Seller in due time, Seller shall be entitled to suspend the performance of its obligations until Buyer has paid all amounts due and/or to terminate the Contract. All overdue payments shall be furthermore subject to a late payment interest at the rate of one point five percent (1,5 %) per month from the due date until the date when all outstanding payments have been made in full.

4 – TAXES

4.1 All taxes, levies, duties and other charges of any nature, present or future, applicable in Seller's country during the performance of the Contract, shall be entirely borne by Seller.

4.2 All taxes, levies, duties and other charges of any nature, present or future, applicable outside Seller's country during the performance of the Contract, shall be entirely borne by Buyer. However, all taxes linked to the performance of the Services on site shall be borne by Seller.

5 – TRANSFER OF RISKS AND TITLE

Transfer of risks of the Product shall pass from Seller to Buyer in accordance with the Incoterms clause selected for delivery of said System. Transfer of title of the Product shall pass from Seller to Buyer upon complete payment of the total Contract price in accordance with clause 3 of these GTC. There is however no transfer of title of any Software.

6 – LIQUIDATED DAMAGES

If the delivery of Product is not successfully performed on time as stated in the time schedule as defined in the Proposal / Contract, for any reason only attributable to Seller, Seller shall owe to Buyer, in the conditions set forth hereunder, liquidated damages (hereinafter called "LDs").

6.1 The LDs shall amount to zero point five percent (0.5%) of the price of the part of the delayed Product per completed week of delay after a grace period of fifteen (15) days, up to a maximum of five percent (5%) of such price.

6.2 Seller will pay the LDs due to Buyer within thirty (30) days from the date of receipt of the corresponding Buyer's invoice.

Buyer must claim the LDs within ninety (90) days of the occurrence of the delay. If Seller does not receive a claim from Buyer for the payment of LDs within this period, Buyer shall be deemed to have waived its right to such LDs.

6.3 Payment by Seller of the LDs shall be in full satisfaction of Seller's liability for delay and is exclusive and in lieu of any other remedy, compensation or damage that may be claimed by Buyer. However, Buyer shall be entitled to terminate the Contract in accordance with clause 14.2 of this Contract in the event Buyer has become entitled to receive the maximum amount of LDs.

7 – WARRANTY

The Product shall be warranted in accordance with the warranty policy attached to the Proposal or any other document agreed in writing by the Parties.

8 – INTELLECTUAL PROPERTY RIGHTS

8.1 Seller shall retain full ownership of any invention, design, process, knowledge, know-how, computer program, information, specification, data and more generally any intellectual property right, generated or acquired by Seller before or during (i) the preparation and/or negotiation of the Proposal or (ii) the course of performance of the Contract.

8.2 Subject to the payment of the total Contract price as set forth in clause 3 of these GTC and of any license fee that may be indicated in the Proposal / Contract, and to the extent Buyer complies with the conditions of use of the Software defined in these GTC and/or the Proposal / Contract, Seller hereby grants to Buyer a personal, non-exclusive and non-transferable license, without any right to grant any sub-license (unless otherwise agreed in writing by Seller), to use the Software in accordance with the applicable specifications and in the country where the Product is installed. The above limited right to use the Software is furthermore subject to Buyer using the Software only in conjunction with the Product. Buyer furthermore acknowledges that other conditions defined in the Proposal / Contract may apply to the use of the Software.

8.3 Buyer shall (i) not reproduce, enhance, adapt, modify, translate, create any derivative work, publish, place onto the internet or any intranet any Software being understood that Buyer shall be however entitled to make one (1) copy of any computer program not embedded into any Product for backup purposes only (in which case the copy shall bear the copyright legend and/or other proprietary notice contained in the Software as delivered by Seller), (ii) not remove from any Product any computer program that may be embedded into said Product, (iii) not reverse engineer, disassemble, de-compile or otherwise attempt to derive the source code from any Software, except as may be authorized by the applicable law for a purpose of interoperability, but in such event subject to Buyer first requiring from Seller all information necessary for such interoperability and requiring Seller to proceed with such interoperability work itself, and (iv) not combine or link without the prior written consent of Seller any Software (not considered as an Open Source Software as defined in clause 10 of these GTC) to any code that would have the effect to subject the Software to the terms of an open source software license.

9 – INFRINGMENT

9.1 In case of any claim or action brought against Buyer alleging that the use of the Product infringes, in the territory where the Product is installed, any copyright belonging to a third party, Seller shall

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defend Buyer against such claim or action, provided that Buyer:

(a) Promptly notifies in writing Seller of any such claim or action with details; and
(b) Gives Seller full control of the defence of such claim or action without making any admission, compromise or settlement of any kind; and
(c) Provides assistance to the Seller, including all documents and information reasonably requested by Seller.

9.2 To the extent such infringement has been actually and finally determined by a court of competent jurisdiction, or a settlement agreement has been approved in writing by Seller, Seller:

(a) Shall indemnify and hold Buyer harmless against any amount to be paid according to the court's judgment or settlement to the benefit of the claiming third party; and
(b) Shall at its own option and expense, either:
   - obtain the right for Buyer to continue to use the Product, or
   - modify or replace any infringing portion of the Product with a portion not infringing and substantially fulfilling the functions of the infringing portion.

9.3 Seller shall have no obligation and liability if the action or claim for infringement is due to (i) Buyer's particular requirements or instructions, or use of any trademarks or
logos designated by Buyer; or (ii) Buyer's use of the Product in combination with other equipment or software other than the equipment and/or Software with which the Product was intended to be used; or (iii) Buyer's modification of the Product without Seller's prior written consent; or (iv) any unauthorised use of the Product by Buyer or any third party. In such cases, Buyer agrees to indemnify and hold Seller harmless against all losses, damages and costs resulting from any such action or claim for infringement.

9.4 The foregoing states the entire liability of Seller in connection with any actual or alleged infringement of the Product. All warranties of non-infringement are hereby disclaimed to the full extent permitted by the applicable laws.

10 - OPEN SOURCE SOFTWARE

Seller hereby notifies Buyer, and Buyer hereby acknowledges and accepts that the Product may contain Open Source Software.

The term Open Source Software shall mean any software or work, including where appropriate any and all modifications, derivative works, enhancements, upgrades, improvements and/or fixed bugs, made to the source code of such software or work, released under a free software license, that requires as a condition of royalty-free usage, copy, modification and/or redistribution of the Open Source Software to:

(a) Redistribute the Open Source Software royalty-free, and/or
(b) Redistribute the Open Source Software under the same license/distribution terms than those contained in the open source or free software license under which it has originally been released and/or,
(c) Release to the public, disclose or otherwise make available the source code of the Open Source Software.

A list of the Open Source Software provided under the Contract and their corresponding licenses are included in the documentation accompanying the Product.

Notwithstanding any other provisions of the Contract (including the Proposal), any Open Source Software provided under the Contract is provided without any warranty of any kind such as but not limited to without warranty of non-infringement or ownership.

11 – CONFIDENTIALITY

11.1 Each Party shall keep all information and/or data received from or made available by the other Party under the Proposal and/or the Contract (hereinafter called "Proprietary Information") in strict confidence and shall only disclose such Proprietary Information to its own employees and/or the employees of any of its Affiliates to the extent said employees have a need to know and solely for the purpose of (i) preparing, negotiating and/or evaluating the Proposal, (ii) performing the Contract and/or (iii) operating and/or maintaining the Product. Either Party shall be however entitled to disclose any Proprietary Information of the other Party to any of its subcontractors provided such subcontractor has previously executed a confidentiality undertaking at least as restrictive as the provisions of this clause 11.

11.2 The receiving Party shall have no obligation or restriction with respect to any Proprietary Information of the disclosing Party for which the receiving Party can prove that such Proprietary Information:

a) Has come into the public domain prior to or after the date of its disclosure and in such case through no wrongful act or negligence of the receiving Party; or
b) Is already known to the receiving Party prior to its date of disclosure, as evidenced by written documentation in the files of the receiving Party, without being subject to any prior confidentiality obligations; or
c) Has been lawfully received from a third party without restrictions and for which it is reasonable to believe that such third party is entitled to make such disclosure without restriction; or
(d) Has been approved for disclosure or use by written authorisation of the disclosing Party but then only to the extent of such written authorisation; or
(e) Is disclosed pursuant to judicial order, a lawful requirement of governmental agency or any stock exchange regulations applicable to the receiving Party (including any of its Affiliates).

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11.3 The provisions of this clause 11 shall remain valid for a period of five (5) years from the date of issuance of the Proposal and, in case a Contract is entered into between the Parties, during the performance of such Contract and for a period of five (5) years from the date of expiration of the warranty period.

12 – FORCE MAJEURE

12.1 No Party shall be liable for any failure to perform or delay in the performance of its obligations if the same is partly or wholly delayed or prevented by an event of force majeure.

Shall be considered as an event of force majeure any event which is beyond the reasonable control of the Parties, such as but not limited to Acts of God (e.g. floods, earthquakes, hurricane), epidemics, fires, explosions, strikes, riots, war, rebellions, sabotage, act or threat of terrorism, shortage in supplies from normally reliable sources (including without limitation electricity, water, fuel), embargo, governmental act or omission (e.g. delay or failure to issue, suspension or withdrawal of any license, permit or authorization), delay from a subcontractor caused by an event of force majeure as defined herein.

12.2 The occurrence of an event of force majeure shall automatically suspend the performance of the concerned obligations and the time schedule shall be postponed for the period necessary to overcome the effects of the force majeure event but not less than the duration of such force majeure event.

However, if the performance of any Party's obligation is delayed or prevented by reason of a force majeure event for a period exceeding three (3) continuous months, either Party may terminate the Contract or any part thereof in accordance with clause 14.2 of these GTC. In the event of
such termination, the Parties will then try to establish by mutual agreement a liquidation settlement.

13 – LIABILITY

13.1 Seller shall not be liable under any circumstances to Buyer for any special, consequential, indirect, incidental and/or punitive loss or damage of whatsoever kind, including without limitation any cost, damage, loss of revenue or profit, loss of production, loss of data, loss of goodwill, incurred or suffered by Buyer or any third party as a result of or in connection with any lack or loss of use of any part of the Product or any other property.

13.2 The total and cumulative liability of Seller arising out of or in connection with the Contract, from any cause whatsoever shall in no event exceed thirty percent (30%) of the total Contract price.

The foregoing shall not affect the right of Buyer to claim compensation against Seller for any direct damage caused by Seller that Buyer may suffer as a result of:

(a) Death or personal injury;

(b) Intentional and/or gross negligence, being understood that the term gross negligence shall mean an action or omission implying an obvious lack of care of Seller (considering the seriousness of the consequences a cautious man of the art would have anticipated) or an action or omission leading to presume a deliberate refusal to take into consideration these consequences and not only any kind of lack of care or lack of skill.

14 – CONTRACT EFFECTIVE DATE AND TERMINATION

14.1 Should a Contract result from the Proposal, said Contract shall become effective on the last to occur of the following events:

(a) Acceptance by Buyer of the Proposal and any other document agreed in writing by Seller, if any; and
(b) Receipt by Seller of the advance payment and/or notification to Seller of the operative documentary credit that may be defined in the Proposal.

If the condition defined in subparagraph (b) above is not fulfilled within a period of thirty (30) days after the date of occurrence of the condition defined in subparagraph (a) above, the Contract shall be deemed to be null and void and of no effect unless otherwise agreed by Seller.

14.2 The Contract may be terminated partly or wholly by either Party by means of a written notice sent with acknowledgement of receipt to the other Party solely in the following cases:

(i) Material breach of the Contract when such material breach is not remedied within a period of sixty (60) days after receipt of a written notice for termination from the non-defaulting Party, provided however that termination for Seller's delay shall not occur before the maximum amount of liquidated damages has been reached as provided in clause 6 of these GTC; or
(ii) Bankruptcy or insolvency of the other Party, or the filing of a petition in bankruptcy or insolvency of such other Party; or

(iii) Force majeure event for a continuous period exceeding three (3) months as provided in clause 12 of these GTC.

Termination of the Contract shall not prevent or delay the payment of any sum due by either Party,

and all provisions which are intended to survive shall survive such termination.

15 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

15.1 The Contract (including the Proposal) shall be governed and interpreted in accordance with the laws of Switzerland with the exclusion of their conflict of laws provisions.

15.2 All disputes between the Parties in connection with or arising out of the Contract (including the Proposal) which the Parties are unable to resolve between themselves, shall be finally settled by arbitration. The arbitration shall be held in Zurich (Switzerland) in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.

Arbitration proceedings and award shall be in English language. The arbitration award shall be final and binding upon the Parties and the Parties agree that no appeal or other proceeding to review, reverse or otherwise modify the said award shall be brought before any court whatsoever.

16 – MISCELLANEOUS

16.1 The Proposal and the Contract constitute the entire agreement between the Parties with respect to the Product to be provided and, cancels and supersedes any prior representation, commitment, communication, acceptance, understanding and agreement between the Parties, whether oral or written, with respect to or in connection with said Product.

16.2 No Party may assign or otherwise transfer the Contract without the prior written consent of the other Party provided however that Seller shall be entitled to assign or otherwise transfer the Contract to any Affiliate subject only to a prior written notice sent to that effect to the Buyer.

16.3 The failure of either Party to exercise any of its rights under the Contract (including the Proposal) for a breach or a default thereof by the other Party shall not be construed as a waiver of any subsequent breach or default, nor shall any delay or omission on the part of either Party to exercise or avail itself any right that it may have hereunder operate as a waiver of such right, unless it is in writing signed by the Party waiving such rights.

16.4 If any of the provisions of the Contract (including the Proposal) is found by a competent authority to be void, invalid or unenforceable, such provision shall be deemed to be deleted and the remaining provisions of the Contract shall not be affected thereby and continue in full force and effect being understood that in such case the Parties shall thereupon negotiate in good faith mutually satisfactory provision to replace any such void, invalid or unenforceable provision.

16.5 Without prejudice to any right or remedy that a third party may have at law or in equity, any third party to the Contract shall have no right to enforce any term of the Contract.

16.6 The governing language of these GTC, the Proposal and/or the Contract shall be the English language.