



**ENERGY HARDWARE HOLDINGS LLC**  
**CONDITIONS OF SALE**

These are the standard terms and conditions (the "**conditions**") referred to in the Quotation provided to the Customer by the Company and/or the Order placed by the Customer with the Company (as the case may be):

1. Wherever the following expressions are used in these conditions, they shall have the meanings respectively given to them below:
  - 1.1 "**Company**" means, **Energy Hardware Holdings LLC**, having its Registered office at; 2730 East Phillips Rd. Greer, SC 29650 (including its successors and permitted assignees);
  - 1.2 "**Customer**" means the person, firm or company who requests a quotation from or places an order with the Company for the supply of Goods (including the permitted assignees of such person, firm or company);
  - 1.3 "**Contract**" means the contract between the Company and the Customer for the sale of the Goods, which contract shall be constituted solely by (i) these conditions and (ii) the Customer's acceptance of the Company's quotation or the Company's acceptance of the Customer's order (as the case may be);
  - 1.4 "**Goods**" means the goods of the nature, specification and quantities identified in the Contract;
  - 1.5 "**Parties**" means the Company and the Customer (and "Party" means either of them);
  - 1.6 "**Confidential Information**" means all and any information provided to the Customer by the Company that is expressly stated to be confidential or could reasonably be considered confidential (however such information is conveyed or presented to the Customer and/or on whatever media such information is stored) and also includes (i) any information of the Company which, if disclosed by the Customer to a third party, would, or would be likely to, prejudice or adversely affect any commercial interest, trade secret, intellectual property right and/or know-how of the Company and (ii) all personal data and sensitive personal data



within the meaning of the Data Protection Act 1998;

1.7 **"Force Majeure Event"** includes any act, event, non-occurrence, omission or accident beyond the Company's reasonable control and includes (without limitation) the following:

1.7.1 strikes, lock-outs or other industrial action;

1.7.2 protester action, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, national emergency, war (whether declared or not) or threat or preparation for war;

1.7.3 fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;

1.7.4 restrictions on or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;

1.7.5 stoppages in, restrictions on or impossibility of the use of any public or private utilities (including, without limitation, supplies of electricity, water, gas and/or telecommunications);

1.7.6 acts, decrees, legislation, regulations or restrictions of any government or governmental body;

1.7.7 acts or omissions of the Customer or any third parties which prevent or delay the production and/or delivery of any Goods;

1.7.8 pandemic or epidemic (whether declared or not).

2. The Contract shall become effective between the Parties (and these conditions shall become binding on and enforceable by the Parties) on and from the date that (a) in the case of an order, the Company issues to the Customer a written acceptance of



the Customer's order or (b) in the case of a quotation, the Customer issues to the Company a written acceptance of the Company's quotation (whichever is the first to occur). In the event of any conflict, inconsistency or ambiguity existing or arising between any provisions of (i) these conditions and (ii) the order placed by the Customer or the quotation issued by the Company (as the case may be), the provisions of these conditions shall, in each and every case, prevail unless the Customer is otherwise notified in writing by the Company. If, at any time, either Party is or becomes aware of any material error or omission in any of the documents comprising the Contract, such Party will immediately notify the other Party of the relevant error or omission, and the Parties shall then both use all reasonable efforts and diligence to agree how the relevant error or omission shall be resolved.

3. The Parties acknowledge and agree that no provision of these conditions shall be construed or interpreted against, or to the disadvantage of, the Company on the grounds that these conditions represent the Company's standard or customary terms and conditions of business and, as the Parties have had the opportunity of obtaining legal advice in relation to the Contract prior to it coming into existence, no provision of the Contract shall be construed contra proferentem.
4. No express limitation, exclusion, disclaimer or other provision of the Contract shall be interpreted or construed as limiting or excluding the liability of either Party for any acts of fraud or fraudulent misrepresentation that they may commit.
5. Any quotation for Goods issued to the Customer by the Company is given on the basis (a) that a binding contract shall only come into existence in accordance with the provisions of Clause 2 and (b) the relevant quotation shall remain valid and open for written acceptance by the Customer within the period of validity specified in such quotation, which period shall be [thirty (30)] calendar days from the date of issue of such quotation unless the Company otherwise notifies the Customer in writing before the expiry of such period.
6. No purported variation of and/or addition to the Contract or these conditions in any document or communication of the Customer shall be binding on the Company unless and until it has been accepted as such in writing by the Company to the Customer.
7. Without prejudice to Clause 8, where a date, dates or period for the delivery of the Goods by the Company or the collection of the Goods by the Customer (as the case may be) is/are specified in the Contract and such date, dates or period is/are not replaced or extended by written agreement between the Parties (or pursuant to the



provisions of Clause 19 or Clause 20) before the occurrence of such date or dates or the expiry of such period, then the Customer shall take delivery of or collect the Goods (as the case may be) by such date or dates or before the expiry of that period (as applicable) and, in respect of the Customer's obligations under this Clause 7, time is declared to be of the essence.

8. Where the quotation or the order comprised in the Contract states that the Goods (or consignments thereof) are to be delivered on or by a particular date or dates, the Company shall take reasonable steps to meet such delivery date or dates. However, the Parties acknowledge and agree that such delivery date or dates are given as estimates only and the Company shall not be liable for any loss or damage (whether direct, indirect, consequential or otherwise and howsoever arising) which may result as a consequence of any delay in the delivery of the Goods (or any of them) on or by a particular date or dates. Subject to the foregoing provisions of this Clause 8, as soon as reasonably practicable after the Company becomes aware of an actual or anticipated delay affecting any delivery date or dates, it shall notify the Customer thereof and seek to agree an alternative delivery date or dates with the Customer (in respect of which both Parties shall be obliged to act reasonably).
9. Where the quotation or the order comprised in the Contract specifies that the Goods (or any consignments of Goods) are to be collected by the Customer from the Company's premises (or from another location) on or by a particular date or dates and the Customer fails to collect such Goods (or any consignment of Goods) within fourteen (14) days of the date or dates for collection thereof specified in the relevant quotation or order, the Company may, after giving the Customer at least fourteen (14) days' notice (but without prejudice to any other right, remedy or entitlement available to the Company), resell or otherwise dispose of all or any part of the uncollected Goods and recover from the Customer, on demand, the shortfall (if any) resulting from any failure to resell such Goods at a price which is not less than the price stated in the Contract.
10. Where the Contract specifies that any details, specifications, drawings and/or other information ("**Customer's Data**") are to be supplied to the Company by the Customer in connection with the Goods, the Customer shall supply such Customer's Data to the Company in sufficient time to enable the Company to perform its obligations and complete delivery of the Goods by the date or dates for delivery identified in the Contract. The Company shall be entitled to place reliance on all or any Customer's Data supplied to it. Without prejudice to Clause 22, the Customer hereby warrants (a) the completeness and correctness of the Customer's Data and (b) that the Company's use of the Customer's Data in connection with the Contract



will not infringe the intellectual property rights of any third party.

11. Notwithstanding any other provision of the Contract to the contrary, the Company shall be entitled, at its option, to supply to the Customer 10% under or over the quantity of Goods ordered from or quoted by the Company, in which event the Customer shall accept such lesser or greater quantity of Goods and pay the Company (pro rata) in respect of such lesser or greater quantity of Goods as if such lesser or greater quantity of Goods had originally been specified in the Contract.
12. Without prejudice to Clause 24, risk in and responsibility for the Goods shall pass to the Customer at the point of delivery specified in the order or quotation comprised in the Contract. Where any Goods are to be shipped and are sold F.O.B. (free on board), risk in the Goods and the responsibility of the Company for the Goods shall cease immediately upon the Goods being placed on board ship and the Company shall be under no obligation to give the Customer any form of notice related to the same.
13. Where no use for the Goods is expressly stated in the Contract, the Company is deemed not to be aware of the Customer's intended use of the Goods. All guarantees, warranties and conditions (including any conditions as to quality or fitness for any particular purpose notwithstanding that such purpose may be known or made known to the Company, but excluding these conditions) are excluded from the Contract to the fullest extent permissible by law (and the Customer hereby waives any right, remedy, claim or entitlement thereto to the fullest extent permissible by law).
14. The Company shall have no liability whatsoever for or arising out of faulty workmanship or defective materials in the Goods unless full particulars of the alleged faults or defects are given by the Customer in writing to the Company within fourteen (14) days of the date of delivery or collection of the Goods (as the case may be), in which case the relevant Goods shall be returned to the Company at the Customer's expense and, if the Company agrees that such Goods are defective because of faulty workmanship or materials the relevant Goods will be rectified or replaced by the Company (the choice as to which being for the Company to determine). The existence of defects of any kind, whether in quality, dimensions or workmanship, in any Goods shall not constitute a valid ground for the cancellation of the remainder of the order and/or the termination of the Contract by the Customer. For the avoidance of doubt, these conditions shall apply to any repaired or replacement Goods which the Company supplies to the Customer pursuant to this Clause 14. The remedial obligation set forth above shall constitute Company's sole liability and Customer's exclusive remedy, whether arising in (a)



warranty, (b) contract, (c) negligence, or (d) otherwise. THE EXPRESS WARRANTIES AND REMEDIES PRECLUDE ANY OTHER CLAIMS OF RELIEF, OR ANY ALLEGED BREACH OF WARRANTY OUTSIDE THE SCOPE OF THE EXPRESS WARRANTIES, FOR ANY CLAIM CONCERNING DEFECTS AND DEFICIENCIES IN THE WORK OR THE GOODS. Company's warranty does not apply to any Goods manufactured by third parties, or to any Goods which has been subjected to misuse, mishandling, misapplication, neglect (including, but not limited to, improper maintenance), accident, improper installation, modification (including, but not limited to, use of unauthorized parts or attachments) or repair performed by anyone other than Company or Company's authorized agents. With respect to Goods manufactured by third parties, Company's liability shall be limited to procuring commercially reasonable warranties and guarantees from the applicable suppliers and rendering all reasonable assistance (short of initiating litigation) to Company for the purpose of enforcing the same.

15. Anything in this Contract to the contrary notwithstanding, the Company shall not be liable for any punitive, indirect, incidental or consequential loss or damage suffered by the Customer as a result of any defects in Goods supplied or the non-delivery of any Goods or the delayed delivery of any Goods or the unavailability of any Goods, howsoever caused, even if due to Company's fault, negligence or any other theory of legal liability, including strict liability.
16. No claim for damage in transit, shortage of delivery or loss of Goods shall be made unless, in the case of damage in transit or shortage of delivery, separate notices in writing are given to the carrier concerned and to the Company within seven (7) days of the Customer's receipt of the Goods or, in the case of any loss of Goods, notice in writing is given by the Customer to the carrier concerned and to the Company within fourteen (14) days of the date of delivery of the Goods in accordance with the Contract. Where any Goods are accepted by the Customer from the carrier concerned without the Goods being checked by the Customer at that time, the Customer must ensure that the delivery book of the carrier concerned is signed "not examined".
17. All special packaging that is deemed necessary or advisable by the Company to facilitate the protection of Goods during their transit may, at the Company's discretion, be charged to the Customer in addition to the price payable for such Goods (and such packaging is not returnable by the Customer).
18. Unless otherwise agreed between the Company and the Customer, the cost of carriage of all Goods delivered to a Customer will be charged to and be payable by the Customer in addition to the price payable for the Goods t h e m s e l v e s .



19. Deliveries of Goods by the Company or collections of Goods by the Customer (if applicable) may be wholly or partially suspended by the Company (in which event the Company shall be entitled to an extension of time to perform its obligations, of a duration equivalent to the period of such suspension) in the event of any stoppage, delay or interruption of work affecting the employees or contractors of the Company or the Customer as a result of strikes, lock-outs, trade disputes, breakdown, accident or any cause whatsoever beyond the reasonable control of the Company or the Customer respectively.
20. The Company shall not be liable for any failure to perform or any delay in performing any of its obligations under the Contract which is caused in whole or in part by a Force Majeure Event. The Company's obligations under the Contract shall be suspended throughout the period that a Force Majeure Event subsists and the Company shall, with effect from the date of cessation of the relevant Force Majeure Event, be entitled to an extension of time to perform its obligations (of a duration equivalent to the period of delay caused by the Force Majeure Event). In the event that any Force Majeure Event prevents the performance of the Company's obligations for a period of six (6) months or more, the Company will be entitled (at the Company's sole discretion) to make partial deliveries only to the Customer or to terminate the Contract immediately upon giving notice thereof to the Customer. Termination of the Contract in such circumstances shall be entirely without prejudice to any rights, claims, remedies or entitlements that may have accrued to either Party on or prior to the date of termination of the Contract as provided herein.
21. If the Customer default or commit a breach of the Contract or if any process, distress or execution shall be levied upon any of the Customer's property or assets, or if the Customer shall make or offer to make any arrangement or composition with its creditors, or if the Customer commits any act of bankruptcy, or if any petition or receiving order in bankruptcy is presented or made against the Customer, or if the Customer is a limited liability entity and any resolution or petition to wind up such company (other than for the purpose of amalgamation or reconstruction of a solvent company) shall be passed or presented, or if an administrator, liquidator or receiver of such company's undertaking, property or assets or any part thereof shall be appointed, or if any equivalent or analogous event shall occur in respect of the Customer in any jurisdiction, then the Company shall have the right forthwith to terminate the Contract by notice to the Customer, provided that any such termination shall be entirely without prejudice to any right, remedy, claim and/or entitlement that may have accrued to the Company on or prior to the date of termination of the Contract as provided herein.
22. The Customer shall indemnify the Company, on demand, from and against all losses, claims, damages, penalties, costs, charges and/or expenses suffered or



incurred by the Company as a result of any use of or work done pursuant to any Customer's Data which caused or contributed to the infringement of any third party's copyright, letters patent, registered design, moral rights or other intellectual property rights.

23. All quotations issued to the Customer by the Company are given strictly on a net cash basis. Payment by the Customer for Goods sold pursuant to the Contract shall be made in full to the Company (together with all VAT payable thereon) by the date (the **"due date"**) occurring thirty (30) days from the last day of the calendar month immediately following the date of delivery or collection of the Goods (as the case may be) and if the Goods are to be delivered or collected (as the case may be) in two or more consignments then:-

(a) payment for each consignment of Goods shall be made in full by the Customer (together with all VAT payable thereon) by the date occurring thirty (30) days after the date of delivery or collection (as the case may be) of the relevant consignment;

(b) if full payment for the Goods or the relevant consignment of Goods is not received by the Company by the applicable due date then the Customer shall also pay to the Company interest on the unpaid sum (or on the unpaid installment or unpaid balance thereof, as the case may be) at the lesser of the rate of 15% per annum and the highest rate permitted by law from the applicable date of delivery or collection to the date of actual payment thereof in full by the Customer, whether before or after judgment;

(c) all late payment interest payable by the Customer pursuant to this Clause 23 shall accrue on a daily basis and the Customer shall pay such interest to the Company together with the overdue sum to which it relates;

(d) the Parties agree that receipt by the Company of the sums payable by the Customer in respect of each consignment of Goods by the due date applicable thereto (together with all VAT and, if applicable, the late payment interest payable thereon) shall be a condition precedent to any future deliveries of Goods by the Company and/or any future collections of Goods by the Customer (as the case may be); and

(e) if any payment to be made the Customer under the Contract (together with all VAT payable thereon) is not received by the Company by the due date applicable thereto, the Company may terminate the Contract on giving notice thereof to the





Customer (which termination shall take effect on and from the date of service of such notice) but such termination shall be entirely without prejudice to any rights, claims, remedies or entitlements that may have accrued to the Company on or prior to the date of such termination.

24. Ownership of the Goods shall not pass to the Customer unless and until the price payable for the Goods and all other sums that, pursuant to these conditions, become payable by the Customer to the Company in respect of the Goods (together with all unpaid sums owed to the Company by the Customer in respect of goods which are the subject of any other contract between the Parties) have been paid to and received by the Company in full. The Customer acknowledges and agrees that, until the date that ownership of the Goods passes from the Company to the Customer pursuant to this Clause 24, the Customer is in possession of such Goods as bailee or trustee for the Company and that until the date that ownership of the Goods passes to the Customer as provided herein, the Customer will hold the Goods to the order of the Company and store the Goods on the Customer's premises separately from the Customer's own property and/or that of any other person (and in a manner which makes the Goods readily identifiable as the property of the Company), provided always that, until ownership of the Goods passes to the Customer as provided herein, (a) the Customer shall hold harmless and indemnify the Company (and keep the Company indemnified) on demand in respect of any loss of or damage caused to the Goods at any time after they have been delivered to or collected by the Customer (as the case may be); (b) if, notwithstanding the foregoing provisions of this Clause 24, the Customer sells the Goods or any of them to any third party, the Customer shall hold the net proceeds of such sale as trustee for and on behalf of the Company until the price of the Goods and all other sums payable to the Company under the Contract have been received by the Company in full; and (c) if the Customer shall make default in any payment due to the Company under the Contract then (without prejudice to any other rights or remedies to which the Company may be entitled) the Company may, for the purpose of making recovery of its Goods, enter upon any premises where the Goods are stored and forthwith take possession of and remove such Goods. Unless otherwise agreed to in a writing signed by Company's duly authorized representative, all rights, title and interests in any inventions, developments, improvements or modifications of the Goods and services provided by Company or Customer shall exclusively remain with Company.

25. The Company shall not under any circumstances be liable to the Customer for any damage, loss or expense whatsoever arising directly or indirectly from any defects in any Goods supplied but not manufactured by the Company, but the Company will at the request and expense of the Customer take such steps as are reasonable in order to obtain for the Customer the benefit of any condition, warranty or guarantee given by the manufacturers of the Goods and to which the Customer may be entitled.



26. The performance by the Company of its obligations under the Contract is subject to (a) the Company receiving or renewing any necessary license, authorization, permission or rights that may be required in order for the Company to lawfully purchase and/or use any of the materials required in the manufacture or preparation of the Goods and (b) the Company being able to obtain such materials at economic cost and on commercially reasonable terms.
27. All orders that are accepted by the Company are accepted on condition that, notwithstanding the value of the Customer's order, the Company may make a minimum charge to the Customer of \$ 50 net per order together with in each case, the costs of carriage and VAT, which sums shall be paid by the Customer to the Company, in addition to the price for the Goods, by the due date applicable thereto.
28. All prices quoted and offers made by or on behalf of the Company are based on the cost of labor, materials and overheads at the date of the quotation or *offer* by the Company and the Company may, at any time prior to or at the time of actual supply of the Goods, amend the price of any item of Goods by the amount of any increase in the cost of labor, materials or overheads forming part of the cost to the Company of producing and supplying such Goods.
29. If the Company quotes a price for the supply of a specified quantity of any Goods, the Company may, in its absolute discretion, decline to accept an order for any lesser quantity of such Goods.
30. Unless otherwise agreed in writing by the Company, the Customer shall not be entitled to cancel any order for any reason other than a fundamental breach of the Contract by the Company and, if the Company agrees to accept cancellation of an order otherwise than because of a fundamental breach of the Contract by the Company, the Company shall (at the option of the Company) be compensated by the Customer, by way of a "cancellation charge", in respect of the costs and expenses incurred by the Company in connection with the order and its cancellation, together with an amount in respect of the loss of profit suffered by the Company as a result of such cancellation (collectively the **"Cancellation Charge"**) which Cancellation Charge shall be determined by the Company, acting reasonably, and then notified in writing to the Customer. The Customer shall pay the relevant Cancellation Charge to the Company within thirty (30) days of the date of service of the Company's notice to the Customer as provided herein, failing which interest at the rate specified in Clause 23 shall accrue and be payable in addition to the Cancellation Charge until all outstanding sums are paid in full by the Customer to the Company.



31. All quotations and prices given by the Company are stated in US Dollars (\$USD) and exclusive of Value Added Tax ("**VAT**"). An amount corresponding to the VAT payable thereon, at the rate of VAT applicable on the date of dispatch of the Goods, will be added to the price(s) payable by the Customer and be shown as such in the Company's invoice(s) to the Customer.
32. The Customer may not transfer or assign any of its rights or obligations under the Contract to any other person without the Company's prior written consent (which consent may be granted or withheld entirely at the Company's discretion). The Company shall be free to transfer, assign, or sub-contract all or any of its rights and obligations under the Contract to any third party (subject to giving notice thereof to the Customer) but this will not affect either Party's rights under the Contract.
33. For the purposes of the contract, all notices to be sent by the Customer to the Company shall be in writing and be sent by post to the Registered Office of the Company from time to time. The Company may give notice to the Customer at either the e-mail address or postal address provided by the Customer in the order or in the Customer's acceptance of the quotation (as applicable). Notices will be deemed received and properly served twenty-four (24) hours after an e-mail is sent or three (3) days after the date of posting of any letter. In proving service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that the e-mail was sent to the specified e-mail address of the addressee.
34. If any provision of the Contract shall be declared to be invalid, unenforceable or illegal by the courts, the Parties agree that such provision may be severed from the Contract and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of the Contract.
35. If the Company fails, at any time while the Contract is in force, to insist that the Customer performs any of its obligations under the Contract, or if the Company does not exercise any of its rights or remedies under the Contract, that will not mean that the Company has waived such rights or remedies and will not mean that the Customer does not have to comply with those obligations. If the Company does waive a default by the Customer, that will not mean that the Company will automatically waive any subsequent default by the Customer. No waiver by the Company of any of these conditions shall be effective unless the Company expressly states that it is a waiver and gives written notice thereof to the Customer.
36. Notwithstanding any other provision of the Contract, the maximum aggregate liability



(whether arising in contract, tort, negligence or any other theory of legal liability) of the Company to the Customer under or pursuant to the Contract (and under any order accepted or quotation issued further to it) shall not exceed a sum equal to the price stated in the Contract on the effective date of the Contract pursuant to Clause 2, and Customer hereby releases Company from any and all further liability, loss, cost or expense in excess of such amount.

37. The Customer shall not, without the Company's prior written permission, disclose to any other person any Confidential Information and the Customer shall not exploit or permit the exploitation of any such Confidential Information for the Customer's own benefit and/or for the benefit of any other person. Wherever requested to do so in writing by the Company at any time, the Customer shall (a) immediately return all Confidential Information held by it to the Company and (b) confirm to the Company in writing that no Confidential Information has been retained by the Customer or disclosed by it to any other person. The Customer shall take all reasonable steps to ensure that such of its employees, agents and contractors (and any other persons for whom the Customer is responsible at law) who are in receipt of or are able to view any Confidential Information are similarly bound by confidentiality obligations equivalent to those appearing in this Clause 37.

38. The Customer shall not (and shall ensure that the Customer's employees, agents, contractors and others for whom the Customer is responsible at law shall not) commit or permit the committing of any act or omission which causes or could cause the Customer and/or the Company to breach, or commit an offense under, any laws relating to anti-bribery and/or anti-corruption and the Customer shall indemnify and hold harmless the Company in respect of all losses, damages, costs, expenses and other liability suffered or incurred by the Company as a consequence of any breach by the Customer (or its employees, agents, contractors and others for whom the Customer is responsible at law) of the Customer's obligations under this Clause 38.

39. Subject to Clause 27, nothing herein, expressed or implied, shall create or establish any third-party beneficiary hereto nor confer upon any Person not a party to this Contract any rights or remedies under or by reason of this Contract.

40. These conditions, the Contract and all matters arising herefrom (including, without limitation, any contractual or non-contractual obligation) shall be governed and construed in accordance with the substantive law of the State of Texas, without reference to its conflicts of laws provisions. Any and all claims, lawsuits or other proceedings for temporary or permanent injunctive relief brought hereunder or any causes of action, lawsuits, hearings or other



proceedings brought in equity hereunder will only be brought in the United States District Court for the District of Southern District of Texas located in Harris County, Texas.

41. These conditions and the Contract supersede all prior communications and agreements of the parties applicable to the subject matter herein and may only be amended by an instrument in writing signed by authorized representatives of the parties hereto.
  
42. If any action or proceeding is brought by any party with respect to the these conditions, the Contract or any matters arising herefrom, or with respect to the interpretation, enforcement or breach hereof, the prevailing party in such action shall be entitled to an award of all reasonable costs of litigation, including, without limitation, attorneys' fees, to be paid by the losing party, in such amounts as may be determined by the court having jurisdiction of such action or proceeding.