



Wagner Renewables Ltd
Unit 1B Keynor Farm, Chalk Lane,
Sidlesham, Chichester,
West Sussex, PO20 7LL
01243 641830
Info@wagner-renewables.com

General Terms and Conditions of Sale

of Wagner Renewables Ltd

for application to business transactions with commercial enterprises

as of January 2015

1. Definitions

1.1 In these General Terms and Conditions of Sale ("Conditions"):

"Buyer" means a commercial enterprise, or any other legal person or individual not being a consumer, to whom Wagner Renewables Ltd is to supply Goods and/or services pursuant to a Contract / order;

"Contract" means any contract for the sale of Goods and/or services by Wagner Renewables Ltd to a Buyer;

"Goods" means goods, products and/or materials which Wagner Renewables Ltd supplies to a Buyer pursuant to a Contract;

"Seller" or "Wagner Renewables" means WAGNER RENEWABLES LTD (registered company number 09011642) a company incorporated in England and Wales whose registered office is at Unit 1B Keynor Farm, Chalk Lane, Sidlesham, Chichester, West Sussex, PO20 7LL.

1.2 Unless the context otherwise requires, any reference to "in writing", "written" or similar expressions includes a reference to facsimile transmission or e-mail, any reference to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. Headings are inserted for convenience only and shall have no bearing on the interpretation of these Conditions.

2. Application

2.1 These Conditions shall govern and be incorporated in every Contract made by or on behalf of Wagner Renewables with a Buyer and apply to all deliveries and services of the Seller for the duration of the business relationship. These Conditions shall prevail over any terms and conditions contained or referred to in any documentation submitted by a Buyer or in correspondence or elsewhere or implied by trade custom practice or course of dealing. Confirmations of the Buyer referring to its own general terms and conditions are hereby objected to.

2.2 These General Terms and Conditions apply only to the relationship with commercial enterprises, or any other legal person or individual not being a consumer.

2.3 Any order placed by the Buyer or any signing of a Contract by the Buyer for Goods and/or services shall constitute an unqualified acceptance of these Conditions. A variation of these Conditions requires written mutual agreement and shall state expressly that it varies these Conditions.

3. Offers, Orders

3.1 A legally binding Contract requires an order confirmation by the Seller in writing or by email. Wagner Renewables' acceptance of any oral or written order from the Buyer shall be effective only where such acceptance is in writing and signed on behalf of Wagner Renewables. A quotation by Wagner Renewables does not constitute an offer and Wagner Renewables may withdraw or revise a quotation at any time before accepting a Buyer's order.

3.2 Wagner Renewables reserves the right to make technical changes in respect of construction, form and material also during the delivery period, as far as such changes are acceptable to the Buyer.

4. Delivery, Shipment, Delivery Period, Default

4.1 Unless otherwise agreed, deliveries are made ex works (EXW) (INCOTERMS® 2010). Section 32(2) of the Sale of Goods Act 1979 does not apply and Wagner Renewables is not required to give the Buyer the notice specified in Section 32(3) of the Act.

4.2 The insured cost of Goods when using a shipping company is £ 1,200 per ton. Additional costs for express shipment are to be borne by the Buyer.



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- 4.2 Delivery periods indicated by the Seller are binding only if expressly agreed in writing. Time for delivery is not of the essence and shall not be made so by the service of any notice.
- 4.3 If the Seller is in default of delivery or performance, the Buyer has to set a reasonable additional period of at least 20 working days. If the Seller still fails to deliver within such additional period, the Buyer will be entitled to withdraw from the Contract. Further claims of the Buyer shall be excluded, except in case of intent or gross negligence.
- 4.4 The Seller is not responsible for delays in delivery or performance due to force majeure or other unforeseeable events that occur through no fault on its part (e.g. business disruptions, strikes, shortage in means of transportation, interference by authorities, difficulties in obtaining material or energy supply), also if occurring at suppliers of the Seller, even if delivery dates were bindingly agreed. In such cases, the Seller shall be entitled either to postpone the delivery date or the performance by the duration of the hindrance or to withdraw from the contract. Claims for damages are excluded in cases of force majeure and other unforeseeable events that occur through no fault on the part of the Seller.

5. Prices, Terms of Payment

- 5.1 All prices are ex works or ex warehouse, plus freight and packaging. The list prices (according to Wagner Renewables' published list of prices) as applicable at the time of conclusion of Contract shall apply. In case of call orders or other Contracts providing for recurring performance, the list prices as applicable at the time of dispatch shall apply.
- 5.2 Wagner Renewables may at any time prior to delivery of the Goods revise prices to take account of any increase in its own costs, including without limitation regarding goods, materials, carriage or labour, and including an increase or imposition of any tax, duty or other levy as well as fluctuations in exchange rates. Where possible, Wagner Renewables will give one month notice of such price adjustments.
- 5.3 Prices are net prices plus applicable statutory VAT. Unless otherwise agreed, the prices do not include costs for the recycling, the recovery or the disposal according to the EU Directive 2002/96/EU (WEEE) and the Waste Electrical and Electronic Equipment (WEEE) Regulations 2006 ("WEEE Regulations").
- 5.4 Payment of invoices shall be made in full within 14 days of invoice unless otherwise agreed and confirmed in writing by Wagner Renewables. Time shall be of the essence of payment. Cheques will be accepted only if agreed and only on account of performance. Interest is payable at 3 per cent above the Bank of England base rate from time to time from the due date for payment until receipt by Wagner Renewables of the full amount (including any accrued interest).
- 5.5 The Buyer is entitled to set off only if its counterclaims are uncontested or established by non-appealable judgement. The Buyer is entitled to assert retention rights only if they are based on the same contract, uncontested, or established by non-appealable judgement.
- 5.6 If the Buyer is in default or there are reasonable doubts as to the solvency or credit worthiness of the Buyer, the Seller - notwithstanding its other rights - shall be entitled to make any still outstanding deliveries only against pre-payment or provision of security, and to demand immediate payment of all claims under the business relationship. The delivery obligations of the Seller shall be suspended for as long as the Buyer is in default of due payments under any Contract with the Seller until all such amounts have been paid.

6. Property and Risk / Retention of Title

- 6.1 The risk passes from the Seller to the Buyer upon handover at the plant or warehouse, in case of shipment as soon as the consignment has been handed over to the carrier (whether named by the Buyer or not) for the purpose of transmission to the Buyer, or has left the plant or the warehouse for shipment purposes. If the shipment is delayed on demand of the Buyer or by its fault, the risk passes to the Buyer upon notification of the readiness for dispatch.
- 6.2 Notwithstanding delivery and passing of risk, the Seller reserves title to the Goods, and the Goods remain the property of Wagner Renewables, until the Buyer pays to the Seller the agreed price for the Goods (together with any accrued interest) and all other claims of the Seller against the Buyer under their business relationship have been settled ("all sums"). This shall apply also in the case that individual or all claims of the Seller have been posted on a current account and a balance has been established.
- 6.3 Until title in the Goods has passed to the Buyer, the Buyer shall hold the Goods and each and any of them as bailee for the Seller and on a fiduciary basis only. The Buyer shall keep the Goods properly marked and identifiable separate from all other goods in its possession, take proper care of the Goods and take all reasonable measures to prevent damage to or deterioration of them. As long as the retention of title remains valid, the Buyer is not entitled to pledge the Goods, to transfer title thereto, or to otherwise surrender them to other persons outside the ordinary course of business. The Buyer has to keep the Goods free from any charge, lien or other encumbrance. The Buyer shall insure the Goods for their full value with a reputable insurer and, upon request, shall use reasonable endeavours to have Wagner Renewables' interest in the Goods noted on the insurance policy. Until the property in the Goods passes to the Buyer, the Buyer shall hold the proceeds of any claim on the insurance policy on trust for Wagner Renewables.



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- 6.4 The Seller shall, notwithstanding that title may not have passed to the Buyer, be entitled to recover the price plus VAT from the Buyer. Wagner Renewables may, by notice to the Buyer at any time after delivery, pass property in the Goods to the Buyer with effect from the date of the notice.
- 6.5 The Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller notwithstanding the fact that they remain the property of the Seller.
- 6.6 A manufacturing, processing, installation or alteration of the Goods by the Buyer is made under the fiduciary relationship, without any obligations for the Seller in this respect. The Seller becomes the owner of the manufactured, processed or altered product. If the new product is manufactured using materials of several owners, the Seller shall receive a co-ownership share in the new product, corresponding to the proportionate value of the Goods.
- 6.7 Any sale or dealing before title has passed to the Buyer shall be considered a sale by the Buyer with the Buyer acting as principal. The Buyer acknowledges that as a consequence of its fiduciary relationship with Wagner Renewables it is under a duty to Wagner Renewables to hold the proceeds of sale of the Goods on trust for Wagner Renewables and not to mingle such proceeds with other money or pay them into an overdrawn bank account and shall ensure that such proceeds are at all material times identified as Wagner Renewables' money.
- 6.8 The Buyer already now assigns to the Seller by way of security all claims coming into existence in respect of the Goods subject to retention of title for any other legal reason (insurance, tort). The Seller accepts the assignment.
- 6.9 The Buyer is not entitled to set off against counterclaims as long as the retention of title remains valid and as long as the counterclaims have not been established by non-appealable judgment or acknowledged.
- 6.10 Wagner Renewables reserves the right to repossess and resell any of the Goods to which it has retained title. Wagner Renewables' consent to the Buyer's possession of the Goods and any right the Buyer may have to possession of the Goods shall cease in the cases of payment default of the Buyer, or the occurrence of any event described in clause 7.2 below. The Buyer grants an irrevocable right and licence to Wagner Renewables to enter the Buyer's premises during normal business hours in order to inspect or repossess Goods to which it has retained title and the termination for any reason of a Contract shall not affect the continuance in force of this right and licence. The taking back shall constitute a withdrawal from the Contract only if the Seller so declares in writing. Upon taking back, the Seller shall be entitled to realisation whereby the proceeds, minus reasonable realisation costs, shall be credited against the liabilities of the Buyer.

7. Default of Acceptance, Damages based on Default of Acceptance

- 7.1 If the Buyer does not accept the Goods despite reminder and setting of a reasonable additional period without being entitled to refuse acceptance, the Seller shall be entitled to demand damages in the amount of 25% of the purchase price of the Goods not accepted.
- 7.2 The assertion of higher damage and the proof of non-existence of or lower damage are reserved for both parties.

8. Cancellation / Termination

- 8.1 The conditions for any cancellation / termination of Contracts should be agreed in writing.
- 8.2 Unless otherwise agreed between Seller and Buyer, the following shall apply in respect of termination: If the Buyer is in material breach of any obligation under a Contract, the Buyer passes a resolution for its winding up or a court of competent jurisdiction makes an order for the Buyer's winding up or dissolution, administration is ordered in relation to the Buyer, or a receiver is appointed, the Buyer makes an arrangement or composition with its creditors generally or applies to a court of competent jurisdiction for the protection of its creditors, or an encumbrancer takes possession of or sells any of the Buyer's assets, Wagner Renewables may on or at any time after the occurrence of any such event suspend further deliveries to the Buyer, exercise in particular its rights under clause 5 above and/or terminate any Contract with the Buyer with immediate effect by written notice to the Buyer.
- 8.3 Upon termination, any claims of Wagner Renewables against the Buyer shall become immediately due and payable and Wagner Renewables shall be under no further obligation to supply Goods or services to the Buyer.

9. Quality, Properties and Measurements

- 9.1 Properties and measurements are defined by the contractual specifications only, and not affected by public statements of the Seller or third parties.
- 9.2 Unless expressly agreed otherwise in writing, all properties, measurements and specifications, drawings, designs, and particulars submitted by Wagner Renewables are approximate only and Wagner Renewables is not liable for any deviation from them.



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10. Software

- 10.1 The Seller grants the Buyer a non-exclusive and non-transferable right to use the software which is delivered by the Seller in accordance with the Contract. The software must not be duplicated, altered or made available to any third party by the Buyer without the Seller's prior written consent.
- 10.2 All rights, in particular copyrights to the software, shall remain with the Seller.
- 10.3 In case of a software defect, the Seller shall not be liable to remove the defect if such removal is unacceptable. Besides, these Conditions shall remain unaffected; the limitation of liability according to clause 14 shall apply.

11. Disposal of Waste Devices

In respect of the legal obligation according to the EU Directive 2002/95/EU (WEEE) and the WEEE Regulations, the following shall apply:

- 11.1 The Buyer assumes the obligation to properly dispose of the delivered Goods after the end of use, at its own cost and according to the legal requirements. The Buyer holds the Seller free and harmless from the obligations according to the WEEE Regulations (take-back obligation of the producer/distributor) and any third party claims in relation thereto.
- 11.2 At its own free discretion, the Seller may take back the delivered Goods after the end of use at the Buyer's cost, and will then cause their proper disposal in accordance with the legal requirements.
- 11.3 The Buyer has to contractually oblige commercial third parties to whom it passes on the delivered Goods to properly dispose of them after the end of use at their costs according to the legal requirements, and to impose a corresponding further obligation in case of a further passing on. Should the Buyer fail to contractually oblige third parties to whom it passes on delivered Goods to assume the disposal duties and to further impose such duties, the Buyer shall be obliged to take back the delivered Goods after the end of use at its cost, and to properly dispose of them according to the legal requirements.
- 11.4 The Seller's claim to assumption / indemnity by the Buyer shall not fall under the statute of limitations before the expiry of two years after a final end of use of the device.

12. Notice of Defects, Rights of the Buyer in case of Defects

- 12.1 The Buyer has to inspect the received Goods for any defects, quality and guaranteed properties without undue delay upon receipt. The Buyer has to notify Seller in writing of any defects, in case of apparent defects within three working days of receipt of the delivery, in case of hidden defects within three working days of detection. Otherwise, the delivery shall be deemed approved.
- 12.2 The Buyer can assert the following rights only if the Seller has been notified of the defect in writing and within the time period, and the Goods were provided to the Seller on its demand without undue delay and free of transportation charges. Should the notice of defect in such case turn out to be justified, the Seller shall bear the costs of sending the Goods back at lowest freight rates.
- 12.3 In case of justified notices of defect submitted in time, supplementary performance shall be rendered at the own choice of the Seller, either by way of removal of the defect or by replacement delivery. In the case of removal of defects, the Seller decides as to whether such removal will be performed by repair or by replacement of defective parts.
- 12.4 The Seller is entitled to two attempts of supplementary performance. If the second supplementary performance attempt fails, the Buyer can at its choice either withdraw from the contract or reasonably reduce the price.
- 12.5 In case of unjustified notices of defect having caused extensive review, the costs of such review can be charged to the Buyer.
- 12.6 The statute of limitations for claims based on defects shall amount to two years from passing of risk.
- 12.7 The Seller shall not be liable for public statements in its advertising or in third party advertising, if and to the extent the Buyer cannot prove that the advertising statements have influenced its decision to buy, that the Seller knew or must have known the statements, or if the statements were already corrected at the time of the decision to buy.
- 12.8 Any claims based on defects are excluded if the Goods have been installed, used or stored contrary to the directions for use or other instructions of the Seller or otherwise inappropriately, or have not been used according to contract, if the maintenance as prescribed in the directions of use was not performed, or if changes or modifications of the Goods or of parts thereof were made without the Seller's consent by the Buyer or any third party, unless the Buyer proves that such circumstances have not caused the notified defect. Any claims based on defects against the Seller shall also be excluded if and to the extent that a defect was caused by a shipping company, courier firm or any other third party involved in the transportation of the Goods or otherwise.



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12.9 The Buyer's claims for reimbursement of expenses are limited to a lump sum for the transportation and travel costs, wage costs and material costs. This shall also apply in case of a recourse claim of the Buyer against the Seller. The Buyer can obtain the defined cost lump sum amounts from the Seller.

12.10 In the case of a sale of used goods, second quality goods as well as outclassed goods and in case of a sale "as is", any liability based on quality defects shall be excluded. The same applies to a sale of preproduction models.

13. Return

13.1 The return of devices or Goods of any kind, i.e. a return for obtaining credit notes, for repairs, or being based on complaints, must be agreed beforehand by obtaining a return consignment number. If there is no return consignment number clearly marked on the package, the acceptance can be rejected, or the Goods be sent back at the expense of the Buyer. In case of an agreed return of Goods, the sender shall bear the costs for freight and packaging as well as the expenses incurred by the Seller for handling the return and for making the returned Goods marketable again. If Goods are returned by the Buyer for any reason other than an actual defect, the Buyer in any event has to bear all transport costs plus 10% handling fee.

13.2 Goods sent back without cost for repair will be examined and, if applicable, repaired. By sending the Goods, the Buyer enters into the obligation to pay the repair costs. A cost estimate will be made on prior demand only. The returning of repaired or unrepaired Goods will be charged.

14. Limitation of Liability

14.1 Any claims for damages and reimbursement of expenses are excluded - irrespective of the kind of breach of duty and including in case of tort - unless based on intentional or grossly negligent action. In case of a violation of essential contractual duties, the Seller shall be liable for any negligence; such liability, however, is limited to the amount of a typical damage foreseeable upon the conclusion of contract. In this case, no claims can be asserted for lost profits or other indirect and consequential damage.

14.2 Wagner Renewables is not liable for any loss, damage or liability of any kind suffered by any third party directly or indirectly caused by repairs or remedial work carried out without Wagner Renewables' prior written approval. The Buyer shall indemnify Wagner Renewables against any loss, liability, and cost arising out of such claims.

14.3 Wagner Renewables' aggregate liability to the Buyer, whether for negligence, breach of contract, misrepresentation or otherwise, shall in no circumstances exceed the purchase price of the Goods as determined by the price invoiced to the Buyer in respect of any occurrence or series of occurrences.

14.4 Subject to this clause 14, all terms and conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Goods are excluded, Wagner Renewables will pass on to the Buyer the benefit of any warranty given by the manufacturer of the Goods, Wagner Renewables is not liable to the Buyer for any loss, damage or injury, direct or indirect, resulting from defects in design, materials or workmanship or otherwise caused howsoever arising (and whether or not caused by the negligence of Wagner Renewables, its employees or agents) other than liability for death or personal injury resulting from Wagner Renewables' negligence, and Wagner Renewables is not liable for any indirect or consequential loss or expenses suffered by the Buyer, howsoever caused, and including, without limitation, loss of anticipated profits, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims.

14.5 Wagner Renewables' prices are determined on the basis of the limits of liability set out in this condition. The Buyer may by written notice to Wagner Renewables request Wagner Renewables to agree a higher limit of liability, provided insurance cover can be obtained for such higher limit. Wagner Renewables shall take out insurance up to such limit and the Buyer shall pay on demand the amount of the premiums. The Buyer shall disclose such information as the insurers shall require and in no case shall the Buyer be entitled to recover from Wagner Renewables more than the amount received from the insurers.

15. Assignment

The Buyer may not assign or transfer, or purport to assign or transfer, any of its rights or obligations under a Contract without Wagner Renewables' prior written consent.



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16. Governing Law

These Conditions and any Contract made under them shall be governed by and construed in accordance with the Law of England and Wales, to the exclusion of the UN Convention on the International Sale of Goods. The courts of England and Wales shall have non-exclusive jurisdiction. Place of jurisdiction for any legal disputes shall be the registered office of the Seller. However, the Seller reserves the right to alternatively invoke the court generally competent for the registered office of the Buyer.

17. Exclusion of Third Party Rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to these conditions nor any Contract made under them and no person other than the Buyer and Wagner Renewables shall have any rights thereunder, nor shall these conditions or any Contract be enforceable under that Act by any other person.

18. Miscellaneous

- 18.1 Unless other agreements have been made in writing, these Conditions comprise all agreements between the Seller and the Buyer.
- 18.2 Information on products, technology and processes that the Buyer receives within the scope of the business relations to the Seller have to be kept strictly confidential by the Buyer, unless publicly known or disclosure has been approved by the Seller. The Buyer has to compensate the Seller for any damage caused by a violation of the confidentiality obligation by the Buyer, whereby the parties are in agreement that a reasonable pre-estimate of the damage would in any event exceed £ 10,000.00 so that such sum can in any event be claimed as liquidated damages.
- 18.3 Place of performance for all obligations under the contractual relationship is the respective warehouse of the Seller.
- 18.4 If any provision of these Conditions is invalid, the validity of the remaining provisions shall remain unaffected thereby.