



TERMS AND CONDITIONS

1 INTERPRETATION

1.1 The definitions and rules of interpretation in these Conditions apply in these Conditions.

ADR notice: has the meaning given in Condition 17.1.1.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Breach of Warranty: anything which is inconsistent with, or a breach of, any warranty, or anything which makes it untrue or misleading

Customer: means the person firm or body corporate who buys or agrees to buy the Products from the Supplier.

Claim: has the meaning given in Condition 10.2.

Confidential Information: has the meaning given in Condition 14.1.

Delivery: completion of delivery of the Products in accordance with Condition 5.1.

Delivery Location: the location specified in the Order for delivery of the Products (or such other location as the Supplier shall reasonably stipulate) which shall usually be at the location of the Site.

Dispute: has the meaning given in Condition 17.1.

Dispute Notice: has the meaning given in Condition 17.1.1

Force Majeure Event: has the meaning given in Condition 15.3

Group: in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries.

Holding company: has the meaning given in sections 736 and 736A of the Companies Act 1985.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how

and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and **Intellectual Property Right** means any one of the Intellectual Property Rights.

Month: a calendar month.

Order: an order for Products given by the Customer in accordance with Condition 3.

Order Number: the reference number to be applied to an Order by the Supplier in accordance with Condition 3.4.

Order Value : the total of applicable Product Prices in relation to products in an Order plus the cost of packaging etc. plus VAT as appropriate.

Product Prices: the prices of the Products as determined in accordance with Condition 8 and **Product Price** means the price of an individual Product as determined in accordance with that Condition.

Products: the products ordered by the Customer.

Planning Acts the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991 and all statutes, regulations and orders included by virtue of Condition 1.6.

Representatives: has the meaning given in Condition 14.3.

Supplier: ELEKTROMOTIVE LIMITED a company incorporated and registered in England and Wales with company number 04676138 whose registered office is at The Sussex Innovation Centre Science Park Square Falmer Brighton East Sussex BN1 9SB.

Site: the location specified in the Order by the Customer where the Products are to be installed.

Site Preparation: the specification of site preparation that may be carried out by the Customer as set out in Schedule Two to these Conditions.

Site Specification: the specification of suitability for sites as set out in Schedule One to these Conditions.

Subsidiary: has the meaning given in sections 736 and 736A of the Companies Act 1985.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

Year: a calendar year.

1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these Conditions.

- 1.3 The schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions and any reference to these Conditions includes the schedules.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of these Conditions and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of these Conditions.
- 1.7 A reference to writing or written includes faxes and email.
- 1.8 Any obligation in these Conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.

2 SUPPLY OF THE PRODUCTS

- 2.1 These Conditions shall apply to all contracts for the sale and supply of Products by the Supplier to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Products shall be deemed to be an acceptance by the Customer to purchase Products pursuant to these Conditions.
- 2.3 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Supplier.
- 2.4 For the avoidance of doubt and whilst the Customer may, if it chooses, carry out Site Preparation itself, the Supplier recommends, for the purpose of maintaining the quality and integrity of Installation, that the Supplier carries out Site Preparation.

3 ORDERS

- 3.1 Each Order shall be deemed to be a separate offer by the Customer to purchase Products on the terms of these Conditions, which the Supplier shall be free to accept or decline at its absolute discretion.
- 3.2 No Order shall be deemed to be accepted by the Supplier until it issues an Order Number or (if earlier) the Supplier notifies the Customer that the Order is ready for delivery.
- 3.3 Each Order shall:
 - 3.3.1 be given by the Purchaser in writing or, if given orally, shall be confirmed in writing within two Business Days;
 - 3.3.2 specify the type of Products ordered;

- 3.3.3** specify the quantity of Products ordered;
- 3.3.4** specify precisely which elements, if any, of Site Preparation the Customer is to carry out;
- 3.3.5** specify the Sites for installation of the Products; and
- 3.3.6** specify the Delivery Location proposed by the Customer.

3.4 The Supplier shall assign an Order Number to each Order it accepts and notify the Order Number to the Customer. Each party shall use the relevant Order Number in all subsequent correspondence relating to the Order.

4 CANCELLATION AND AMENDMENT OF ORDERS

4.1 The Customer may within 7 days of placing an Order cancel an Order by written notice to the Supplier. If the Customer cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of deemed receipt of the cancellation, except that where the cancellation results from the Supplier's failure to comply with its obligations under these Conditions the Customer shall have no liability to the Supplier in respect of it.

4.2 Following acceptance or deemed acceptance of an Order by the Supplier, the Order may not be amended by the Customer unless the Supplier agrees in writing to the amendment.

5 DELIVERY AND INSTALLATION AT SITES

5.1 Delivery of an Order shall be completed when the Supplier places the Products at the Customer's disposal at the Delivery Location. For this purpose the Customer shall ensure that the Products can be delivered at the Delivery Location on any Business Day between 9 a.m. and 5 p.m.

5.2 The Supplier may deliver Orders by instalments, which may be invoiced and paid for separately. Where Orders are to be delivered by instalments, they may be invoiced and paid for separately. References in these Conditions to Orders shall, where applicable, be read as references to instalments.

5.3 Time shall not be of the essence and any delays in the delivery of an Order shall not entitle the Customer to:

5.3.1 Refuse to take delivery of the Order; or

5.3.2 Terminate these Conditions.

5.4 If the Customer refuses to take delivery of Products, then:

7.2.2 All other sums which are or which become due to the Supplier from the Customer for sales of Products or on any account.

8 PRODUCT PRICES

8.1 The Product Prices shall be set by the Supplier from time to time and subject to increase by the Supplier from time to time, provided that such increase shall be notified to the Customer.

8.2 The Product Prices are exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on a supply of Products.

8.3 The Product Prices are exclusive:

8.3.1 of the cost of Installation, which cost shall be notified to the Customer in advance of Installation and paid by the Customer in accordance with the Supplier's normal payment terms.

8.3.2 of the costs of packaging, insurance and carriage of the Products, which shall be paid by the Customer.

9 TERMS OF PAYMENT

9.1 The Order Value shall be paid by the Customer to the Supplier:

9.1.1 50% within 5 Business Days after the date of the Order; and

9.1.2 the remaining 50% within 5 Business Days after Installation.

9.2 The Supplier shall issue to the Customer invoices for payment in accordance with Condition 9.1 and payment shall be made to the bank account nominated in writing by the Supplier.

9.3 If the Customer fails to make any payment due to the other under these Conditions by the due date for payment (**due date**), then, without limiting the Supplier's remedies under these Conditions, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. This Condition 9.3 shall not apply to payments that the Customer disputes in good faith.

9.4 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment.

If the parties have not resolved the dispute within 30 days of the Customer giving notice to the Supplier, the dispute shall be resolved in accordance with Condition 17. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in Condition.

- 9.5** Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party under these Conditions against any amounts payable by it to the other party under these Conditions.

10 CUSTOMER WARRANTIES AND INDEMNITIES

Customer Warranty

10.1 The Customer warrants:

10.1.1 That it has complied in all respects with the requirements of all statutes applicable to the installation and use of the Products on the Site including those relating to health and safety.

10.1.2 That it has obtained any permissions and consents that may be required to install and use the Products on the Site.

10.1.3 That it has observed and complied with the provisions and requirements of the Planning Acts affecting the installation and use of the Products on the Site.

10.1.4 That the Site conforms to the Site Specification.

10.1.5 That the Site may lawfully be used, and is physically suitable for the installation and use of the Products.

10.1.6 That the electricity connection to the Site is safe and complies with all relevant statutory provisions and regulations and that the electricity supply is suitable for the installation of the Products.

10.1.7 That if it has carried out any Site Preparation, it has done so using reasonable care and skill to a reasonable standard and to the Supplier's satisfaction in accordance with any advice issued by the Supplier.

Customer's Indemnity

- 10.2** The Customer shall indemnify and keep indemnified the Supplier against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) (each a **Claim**) suffered or incurred by the Supplier arising out of or in connection with any claim in circumstances where there is a Breach of Warranty.

11 SUPPLIER WARRANTIES

- 11.1** Subject to the terms of Conditions 11.2 to 11.4 inclusive the Supplier warrants to repair, or at the Supplier's option, to replace any defective parts of Products.
- 11.2** No claim can be made under the Warranty in Condition 11.1:
- 11.2.1** unless it is made by the Customer within 24 months after Delivery of the relevant Product.
 - 11.2.2** where maintenance to the Product has been carried out by anyone other than the Supplier or one of the Supplier's authorised contactors.
 - 11.2.3** where any fault or deficiency in the Product is a result of poor Site Preparation (and the Supplier's shall have absolute discretion to decide if Site Preparation has been carried out poorly and its decision shall be final and binding on the parties), improper use, insufficient care, normal wear and tear, unauthorised servicing or any other damage howsoever caused.
- 11.3** In all cases the Supplier has sole responsibility for determining the cause and nature of failure and Supplier's determination with regard thereto shall be final.
- 11.4** Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions.

12 INSURANCE

During these Conditions and for a period of one year afterwards:

- 12.1** The Supplier shall maintain in force the following insurance policies with reputable insurance companies:
- 12.1.1** Public liability insurance with a limit of at least £10 million per claim; and
 - 12.1.2** Product liability insurance with a limit of at least £10 million for claims arising from a single event or series of related events in a single calendar year.
- 12.2** The Customer shall maintain in force with a reputable insurance company public liability insurance with a limit of at least £5 million per claim.

13 LIMITATION OF LIABILITY

- 13.1** These Conditions set out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and sub-contractors) to each other in respect of:
- 13.1.1** Any breach of these Conditions;

- 13.1.2** Any use made of the Products by the Customer; and
- 13.1.3** Any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.
- 13.2** Subject to Condition 13.3 the sole liability of the Supplier arising under or in connection with these Conditions, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be repair, or at the Supplier's option, replacement of defective parts of the Product pursuant to Condition 11.1.
- 13.3** Nothing in these Conditions shall limit or exclude the liability of either party for:
- 13.3.1** Death or personal injury resulting from negligence; or
- 13.3.2** Fraud or fraudulent misrepresentation.
- 14 CONFIDENTIALITY**
- 14.1** Each party undertakes that it shall not at any time during these Conditions and for a period of two years after termination disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any member of its Group, including but not limited to information relating to a party's operations, processes, plans, Product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by Condition 14.2.
- 14.2** Each party may disclose the other party's Confidential Information:
- 14.3** To its employees, officers, agents, consultants or sub-contractors (**Representatives**) who need to know such information for the purposes of carrying out the party's obligations under this Condition 14, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this Condition 14 as though they were a party to these Conditions. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in these Conditions; and
- 14.4** As may be required by law, court order or any governmental or regulatory authority.
- 14.5** Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Conditions are granted to the other party or to be implied from these Conditions. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

15 FORCE MAJEURE

15.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under these Conditions so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.

15.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event:

15.2.1 Notify the other party of the nature and extent of such Force Majeure Event;
and

15.2.2 Use all reasonable endeavours to remove any such causes and resume performance under these Conditions as soon as feasible.

15.3 For the purposes of this Condition 15, a **Force Majeure Event** means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

16 SEVERANCE

16.1 If any provision of these Conditions (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17 DISPUTE RESOLUTION PROCEDURE

17.1 If a dispute arises out of or in connection with these Conditions or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in these Conditions, the parties shall follow the dispute resolution procedure set out in these Conditions:

17.1.1 Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documentation. On service of the Dispute Notice the Managing Director of the Supplier and senior officer or employee of the Customer are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the senior officer or employee of the Supplier

and Managing Director of the Customer who shall attempt in good faith to resolve it; and

17.1.1 If the Managing Director of the Supplier and senior officer or employee of the Customer are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.

17.2 No party may commence any court proceedings in relation to any dispute arising out of these Conditions until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

18 VARIATION AND WAIVER

18.1 Any variation of these Conditions must be in writing and signed by or on behalf of the parties.

18.2 Any waiver of any right under these Conditions is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

18.3 No failure to exercise or delay in exercising any right or remedy provided under these Conditions or by law constitutes a waiver of such right or remedy nor shall it prevent any future exercise or enforcement of such right or remedy.

18.4 No single or partial exercise of any right or remedy under these Conditions shall prevent or restrict the further exercise of that or any other right or remedy.

19 NOTICES

19.1 A notice served under these Conditions shall be sent to the last known address or fax number or email address.

19.2 A notice or any other communication given in connection with these Conditions is deemed to have been received:

19.2.1 If delivered personally, at the time of delivery; or

19.2.2 In the case of fax, at the time of transmission; or

19.2.3 If sent by commercial courier, at the time of signature of the courier's delivery receipt; or

19.2.4 In the case of pre-paid first class post or recorded delivery, 9.00 am on the second Business Day after posting; or

19.2.5 In the case of airmail, 9.00 am on the fifth Business Day after posting; or

19.2.6 If sent by email at the time the email was sent.

19.3 For the purposes of these Conditions:

19.3.1 All times are to be read as local time in the place of deemed receipt; and

19.3.2 If deemed receipt under these Conditions is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on any Business Day), the notice shall be deemed to have been received at the opening of business on the next Business Day in the place of receipt.

19.4 To prove delivery, it is sufficient to prove that the notice was transmitted by fax to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

20 GOVERNING LAW AND JURISDICTION

20.1 These Conditions and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law.

20.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions or its subject matter.

Schedule One - Site Specification

1. The Customer must obtain (at the Customer's time and expense) in advance of Delivery any necessary "traffic management orders" (TMO's) with regard to on-street installations.

2. For "on street" or "open air" car park Sites, it must be possible for an unrestricted hole approximately 300mm x300mm x 600mm deep to be dug to accommodate the foundation post (also known as the ground anchor) for the Product which will be submerged in concrete and the Customer must dig a trial hole of at least 300mm x300mm x 600mm deep prior to Delivery to verify that there are no restrictions or obstacles, buried services or cables restricting the installation of the foundation post.

3. It must be possible to dig trenching from the electrical feeder pillar to the Product without any obstruction either overland or underground.

4. For installations of Products in covered multi-story car parks there must be a suitable brick or concrete wall substantial enough to fix the wall mounted version of the Product and its associated fixing hardware (this weighs approximately 20 kilos). The minimum depth of the screw fixings is 100mm.

5. For all Sites there must be available an electricity supply:

5.1 within 3 meters for on street or 50 meters for a wall mount installation or such different distance as agreed in writing by the Supplier of the area where the first Product is to be installed; and

5.2 of a minimum rating of 20 amps @ 240 volts AC. If a higher rating is required the Supplier shall notify the Customer in advance.

6. For Products installed in multi-story car parks and fed from an existing electrical distribution board, there must be room for an additional electricity supply of 16 amp MCB (TYPE B. 1U wide) for each Product. The electrical distribution room must not be further than 50 meters or such different distance as agreed in writing by the Supplier to the area where the first Product is to be installed.

7. Any existing electrical wiring, distribution boards, fuse boxes, etc. must conform and be certified to current wiring regulations. Any spare parts or additional fuses, RCD or MCB's must be current and readily available from the Customer or from such other source as agreed in writing by the Supplier.

8 Any groundwork or electrical installations carried by the Customers or their sub-contractors must be to current regulation and accepted by the Supplier's engineers prior to Delivery.

Schedule Two – Site Preparation

For an "on-street" installation in a pavement, walkway or surface car park, the Customer may (and if any of the following preparation is undertaken by the Customer, the Customer gives the warranties set out in Condition 10 above in respect of all Site Preparation undertaken) :

1. Dig trial holes to check that there are no underground obstructions which would prevent the Product ground anchor to be installed.
2. Dig and excavate any trenches, to current regulation depth, required to facilitate the laying of electrical cable in ducting that will run from the electrical distribution board, (mains board) to each Product ground anchor. The Supplier can advise in respect of current regulation depth if clarification is requested in writing by the Customer.

3. After trial holes have been dug, dig holes suitable for the installation of the Product's ground anchor (also known as a foundation post), such holes to be 300mm x 300mm x 600mm deep, unless otherwise advised by the Supplier.
4. Concrete the ground anchors into place making sure they are level, and true.
5. Back-fill any excavations and re-instate any surface finish.
6. Pull the electrical cable through the ducting so it runs from the electrical feeder pillar (mains board) to each of the Product's ground anchors. The electrical cable must be of a type known as "swa" or armoured cable and the Supplier will specify on request the size of this cable, which will be dependant on distance and load.
7. Connect one end of the electrical "swa" cable or armoured cable to mains board and carry out safety inspection and test to verify that the requirements of the Regulations have been met in accordance with the then current IEE wiring regulations (currently Seventeenth Edition) by a qualified electrical engineer.
8. Issue the Supplier with an electricity test Certificate in accordance with the then current IEE wiring regulations (currently Seventeenth Edition).

For a " wall mount" installation in a multi-storey car park or other similar situation not involving ground excavation:

1. Run and fix in place electrical cable from the electrical distribution board to the site of the wall mounted Product. The Supplier can advise in respect of current specification of the cable if clarification is requested in writing by the Customer. The Customer must leave a suitable length of cable, unfixed, and at a length specified by the Supplier, ready for the connection of the Product. All work undertaken by the Customer must be with the then current IEE wiring regulations (currently Seventeenth Edition).
2. Fit circuit breakers, of a suitable loading, to the mains board.
3. Connect the cable for the Product into the mains board.
4. Carry out safety inspection and test to verify that the requirements of the Regulations have been met in accordance with the then current IEE wiring regulations (currently Seventeenth Edition), using a qualified electrical engineer.
5. Issue the Supplier with an electricity test Certificate in accordance with the then current IEE wiring regulations (currently Seventeenth Edition).