

# Terms & Conditions of Sale

26 July 2019

## ARTICLE 1. APPLICABILITY

1.1 All offers, order confirmations and deliveries of products offered for sale by Super B Lithium Power B.V. (hereinafter: "Super B") are subject to these general terms and conditions of sale. The applicability of any other terms and conditions (such as the customer's general terms of purchase) is expressly excluded. Deviating stipulations and any general purchase conditions of the customer apply only to the extent that such deviating stipulation or purchase conditions have been expressly accepted by Super B in writing, and only for the agreement with regard to which they have been accepted. Any other general terms and conditions are explicitly excluded by Super B.

1.2 Accepting an offer and/or placing an order implies that the customer accepts the applicability of these general terms and conditions of sale.

1.3 Orders and changes thereto shall be binding for Super B only if they have been accepted and confirmed by Super B in writing. Super B reserves the right to refuse to carry out an order, without stating the reasons. Super B cannot be held liable for any direct or indirect damage arising from such refusal.

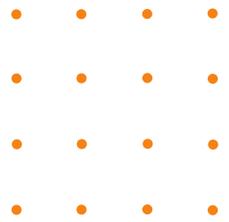
## ARTICLE 2. OFFERS / AGREEMENTS

2.1 All offers of Super B and the prices and conditions stated in those offers are always non-binding offers. Super B expressly reserves the right to revoke the offer or to change the prices at any given time, particularly when required to do so pursuant to statutory provisions or pursuant to price increased by its suppliers.

2.2 Illustrations, drawings, specifications of dimensions and weight which form the basis of the offer or order confirmation, shall as a rule only be seen as approximate values, insofar as they are not exclusively designated to be binding.

2.3 All offers of Super B are subject to subsequent correction in case of any errors, including typographical and clerical errors and errors in engineering.

2.4 An agreement between the customer and Super B is concluded subject to the acceptance of the customer's order by Super B. Super B is entitled to refuse orders and/or to attach certain conditions to the delivery. If an order is not accepted, Super B shall use reasonable efforts to notify the customer within five (5) working days of receiving the order and Super B shall immediately refund any amounts paid. Super B reserves the right to also refuse orders after five (5) working days of receiving the order.



## **ARTICLE 3 PRICES AND PAYMENT**

3.1 The prices quoted by Super B are exclusive of VAT. The prices are on an FCA Hengelo basis and exclusive of handling and dispatch costs and exclusive of possible taxes or other levies imposed by the Dutch government and/or the customer's government, such as taxes or import duties, unless stated otherwise in writing.

3.2 Payment will be made in full before delivery of products unless explicitly agreed differently in writing by Super B for a specific order.

3.3 If no payment has been made by customer by the payment date mentioned on the invoice, the customer will be automatically in default and Super B will have the right to charge a late payment fine of 5% of the outstanding amount, plus statutory interest for every day that such late payment continues. All legal fees for collecting the outstanding amount shall be for the account of customer.

3.4 If the customer is in default of any payment, Super B shall also be entitled to suspend its performance of that agreement and related agreements. The customer shall not be entitled to set off any amounts owed by Super B.

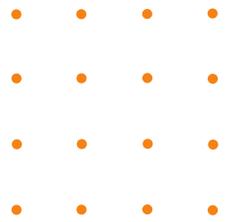
3.5 If the cost price or the prices at which Super B purchases parts, products and/or services offered by third parties are subject to change between the day on which the agreement with the customer was entered into and the day of delivery, Super B shall be entitled (at its option) to increase the price accordingly or to cancel the order. Super B cannot be held liable for damage arising directly or indirectly from such amendment and/or cancellation. In the event of such price increase, the customer is entitled to cancel the order free of charge within ten (10) days of Super B having announced the price increase.

3.6 Disputes between the customer and Super B regarding quality, delivery or any other complaint submitted by the customer shall not entitle the customer to suspend payment.

## **ARTICLE 4. DELIVERY**

4.1 Delivery will be FCA Hengelo (Incoterm 2010) unless agreed differently for a specific order. Any delivery time frames communicated by Super B are for indicative purposes only. If Super B exceeds the delivery term, this does not give the customer any right to claim any compensation, nor does it give the customer the right to cancel the customer's order or to terminate the agreement, unless the delivery term has been demonstrably exceeded to such extent that the customer cannot reasonably be expected to honour the agreement. In that event, the customer is entitled to cancel the order and/or to terminate the agreement by means of a written notice. Such cancellation or termination is subject to the customer returning any products already delivered to the customer to Super B at customer's cost.

4.2 The cancellation of orders is subject to the written confirmation of Super B. In the event of cancellation Super B shall be entitled to claim compensation of costs it had to make



related to the order, such as, but not limited to dispatch costs if the order was already dispatched but not collected or purchase of raw material or components that cannot be used for other customers. Any such costs shall be charged to the customer or set off from any amount already paid by the customer.

4.3 The ordered products are delivered to the address as indicated by the customer when ordering. If the customer wants to change the delivery address before the moment of dispatch, the customer must notify Super B of such new address in writing. A change of address may be subject to administration costs and/or a higher handling fee and dispatch costs.

## **ARTICLE 5. RETENTION OF OWNERSHIP**

5.1 Ownership of the products that have been delivered to the customer shall not pass to customer until the customer has paid the entire purchase price to Super B as stipulated in the agreement. Any risk in respect of the products shall pass to the customer at the time of delivery in accordance with the applicable Incoterm.

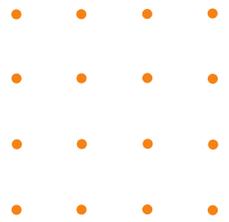
## **ARTICLE 6. WARRANTY AND LIABILITY**

6.1 Upon delivery the customer is obliged to immediately verify whether the products have been damaged during transport. In the event that any such damage has arisen, the customer must notify Super B thereof as soon as possible, in any event no later than three (3) days of delivery, by means of accurate, written statement, stating the damage and where possible a photograph. Failure to inspect the products and inform Super B within the stated time or the use of the products at any time shall be conclusive evidence that Super B has satisfactorily tendered delivery.

6.2 In the event that the customer demonstrates that any of the delivered products do not conform to the agreement, Super B (at its option, upon having received those products returned by the customer) has the option to either repair or replace such products by new products, or to refund the invoice value, exclusive of any dispatch costs.

6.3 Super B grants a three year limited warranty for damages caused by manufacturing defects starting at the time of delivery. Damages caused by manufacturing defects do not include damage resulting from (a) general wear and tear, (b) short circuit, (c) overcharging, (d) deep discharging, (e) overheating of Super B products (f) installation of the Super B product by persons unskilled to work with electro-technical devices or components, (g) any other wrongful use contrary to the Super B's user manual or the safety instruction, (h) any use contrary to the product specifications of that product; (i) any acts of force majeure.

6.4 The warranty period for parts of the product which have been repaired or replaced under the warranty, shall be twelve (12) months from the date of repair or delivery of the replacement.



6.5 Except as specified in the clause 6.3 and 6.4 Super B makes no warranty, whether express or implied, including without limitation any implied warranty of merchantability and fitness for a particular purpose or any warranty arising from any course of dealing, course of performance or usage of trade and specifically disclaims any representation or warranty that the product will meet customer's requirements, perform any specific function or achieve a desired result other than expressly stated by Super B in writing.

6.6 Except as specified in the clause 6.3 Super B makes no warranty, whether express or implied, including without limitation any implied warranty of merchantability and fitness for a particular purpose or any warranty arising from any course of dealing, course of performance or usage of trade and specifically disclaims any representation or warranty that the product will meet customer's requirements, perform any specific function or achieve a desired result other than expressly stated by Super B in writing.

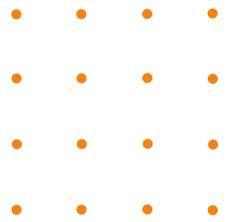
6.7 Any liability to the customer in any case ceases to apply in the event that the customer fails to notify Super B of the existence of the defect within ten (10) days of having discovered the defect, in writing, in order to enable Super B to investigate the damage. Some of Super B's products electronically store usage data, including charging/discharging data, in order to enable Super B to analyze such data retroactively when investigating damage.

6.8 Any liability of Super B for damage suffered by the customer is in any case limited to the invoice amount of the relevant products, unless such damage has been caused by gross negligence or willful misconduct of Super B. Super B can never be held liable for (a) damage caused by any of the circumstances mentioned in clause 6.3, leading to damage to the Super B products or to any other device located near those products, or (b) consequential damage or (c) loss of profits or goodwill.

6.9 To the extent that a court determines that the limitation of liability as meant in clause 6.7 cannot be invoked against a particular claim for damages by the customer, Super B's liability for loss of property, damage to property, and bodily injury (including death) caused by the application of those particular Super B products shall in any event be limited to the amount actually paid out by Super B's insurance company to Super B in accordance with the insurance cover of that insurance policy for that particular type of damage. Super B has taken out insurance against certain risks, as described in the respective insurance policies. These policies contain a usual limitation of insurance payment to be paid out to Super B if, and to the extent that, the event is a covered event.

## **ARTICLE 7. EXPORT CONTROL**

7.1 The customer shall not export, directly or indirectly, any technical information acquired from Super B under the agreement or any Super B products using such technical information to a location or in a manner that at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate governmental entity in accordance with applicable law.



7.2 Super B's products are inherently destined for civilian (i.e. non-military) purposes. The customer shall not apply the products in any military device, unless specifically agreed with Super B in writing.

7.3 Super B shall be entitled to cancel an order at any time if it has reason to believe (in its sole opinion) that any applicable export control or trade laws might be violated if it was to fulfil such order, without being liable to pay any compensation for damages or otherwise to the customer.

## **ARTICLE 8. FORCE MAJEURE**

8.1 In the event of force majeure, without prejudice to any of its other rights, Super B, at its discretion, has the right to suspend execution of the customer's order and/or to terminate the agreement out of court by notifying the customer of such suspension and/or termination in writing, without Super B being obliged to pay the customer any compensation.

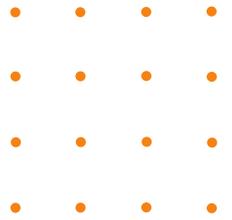
8.2 Force majeure is understood to mean, but not limited to, any failure in the performance which cannot be attributed to Super B, or to intermediaries and third parties engaged by Super B. Force majeure on the part of Super B is in any event understood to mean, but is not limited to, strikes among the workforce of Super B and strikes among third parties involved by Super B, as well as natural disasters and other unexpected events beyond Super B's control.

## **ARTICLE 9. GENERAL PROVISIONS**

9.1 The customer shall observe confidentiality in respect of all information, specifications, business information and know-how concerning and provided by Super B. Upon request of Super B the customer shall return the same to Super B, carriage paid, in sound condition within fourteen (14) days.

9.2 Irrespective of the existence of legal protection rights, all ideas, inventions, designs and samples, works protected by copyright, patents, design rights, trademarks, copy rights and trade secrets and all know-how or other intellectual property related to goods manufactured by Super B or generated within the execution of an order, and all techniques applied by Super B to manufacture and design the products, preliminary to or upon processing of an order, shall always remain or become as the case may be sole intellectual property of Super B.

9.3 If one or more of the provisions of these terms and conditions or any other agreement with Super B should conflict with any applicable statutory provisions, the relevant provision shall become void and be replaced by a legally permissible and comparable provision to be formulated by Super B. The remaining provisions of these general terms and conditions shall continue to apply in full.



## **ARTICLE 10. APPLICABLE LAW AND DISPUTES**

10.1 All rights, obligations, offers, orders and agreements which these general terms and conditions apply to are governed solely by Dutch law with the exclusion of the rules of international conflict of laws. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is also excluded.

10.2 All disputes between the parties arising as a result of the agreement to which these terms and conditions apply, or any other agreement derived from that shall be exclusively submitted to the competent court in the district of Amsterdam, the Netherlands, unless Super B chooses to submit the dispute to any other competent court.

*These Terms and Conditions of Sale have been drafted in English. In case of discrepancies between the English version and any translated version the original English version shall prevail in all cases.*