



# Terms and Conditions

Issue 1  
November 2020



A3A Consult Ltd (Trading as A3A Energy)

## **Terms and Conditions of Trade**

### **1. PRELIMINARY**

1.1 IN these Conditions: "the Company" means A3A Consult Ltd or any Associated Company, "the Contract" means the Contract between the Company and the Customer for the supply and / or install of Equipment, "the Customer" means the person firm or company with whom the Contract is made by the Company, "the Equipment" means any equipment, machinery, parts, spares, software and any other goods sold or supplied by the Company, "the Warranty Period" means (i) in the case of hardware a period of twelve months from the date of delivery or the balance of any warranty period provided to the Company by the manufacturer if greater or (ii) in any other case a period of ninety days from the date of delivery, "the Supplier" means the person firm or company with whom a Contract is made by the Company for the supply of products or services.

1.2 THESE Conditions apply to all Contracts of the Company to supply and / or install Equipment and shall prevail over any terms put forward by the Customer unless the Company expressly agrees to them in writing. No conduct by the Company shall be deemed to constitute acceptance of any terms put forward by the Customer and no concession made or latitude allowed by the Company to the Customer shall affect the strict rights of the Company under the Contract.

1.3 THESE Conditions may only be varied with the express written agreement of the Company.

### **2. PRICES**

2.1 UNLESS otherwise specified prices payable are inclusive of carriage within the United Kingdom. Overseas delivery will be subject to the Company's right to require payment of delivery charges, insurance costs, custom duties, special handling charges and/or packaging charges as appropriate.

2.2 THE Company shall have the right at any time to revise prices to take into account increases in costs including (without limitation) costs of agreed changes in any taxes, duties, levies or exchange rates or costs arising as a result of site conditions, delays, interruptions, lack of information and any other factor beyond the Company's control.

### **3. ORDERS AND DELIVERY**

3.1 NO order shall be accepted by the Company unless first confirmed by the Customer in writing (incl email) or electronically.



3.2 THE Customer shall state on placing an order where they require installation or carriage to and if so the delivery address.

3.3 ALL times or dates given for installation and/or delivery of the Equipment are given in good faith and best endeavours will be used to achieve them.

3.4 THE Company shall give the Customer notice when the installation and/or delivery of the Equipment is ready. If the Customer fails to arrange installation or take delivery (as the case may be) of Equipment ordered within seven days of service of that notice then (a) the Customer will bear the risk of any loss or damage to the Equipment after expiry of that time (b) the Company shall be entitled to immediate payment in full for the Equipment which is the subject of the order and (c) the Customer shall in addition to the invoice price pay all costs of storage and any additional costs incurred as a result of such refusal or failure. The Company shall not be liable to the Customer for any loss or damage to the Equipment caused by their storage.

3.5 THE Company may make and the Customer shall accept partial deliveries of Equipment ordered. Each delivery shall be considered to be the subject of a separate Contract and failure by the Company to make any one or more deliveries in accordance with the Contract or any claim by the Customer in respect of any one or more deliveries shall not entitle the Customer to treat the Contract as a whole repudiated.

#### **4. ACCEPTANCE**

4.1 THE Customer will accept the Equipment even if it is installed or delivered later than stated up to a period of 4 weeks and will not entitle the Customer to terminate the Contract.

4.2 THE Customer shall inspect the Equipment as soon after installation and /or delivery as is reasonably practicable and in any event within 5 days after delivery, which period the customer agrees is a reasonable period given the nature of the Equipment supplied by the Company.

4.3 THE Customer will notify the Company in writing of any shortage of supply deficiency, or damage to or fault with the Equipment within 5 days of delivery. This does not apply to installations. If the Customer fails to comply with this clause the Company shall not be liable to the Customer in respect of any shortage, discrepancy, damage or fault, or in respect of any consequential losses or expenses arising there from.

4.4 THE Customer hereby agrees that the retention of the Equipment without written complaint to the Company within 5 days of delivery constitutes for all purposes an intimation by the Customer that the Equipment has been unconditionally accepted, and that given the nature of the Equipment supplied by the Company, 5 days constitutes a reasonable period within which the Equipment should be rejected.

#### **5. RISK**



5.1 FROM the time the Equipment leaves the Company's premises whether this be by receipt by carriage or installation of the Equipment, the risk in the Equipment shall pass to the Customer and he shall be solely responsible for the custody and maintenance thereof.

## **6. PAYMENT**

6.1 PAYMENT for installation shall be made in full without any deduction or set-off on completion of installation unless otherwise agreed in writing by the Company. A deposit payment will be required to secure the order, complete the survey and arrange installation.

6.2 PAYMENT for supply only shall be made in full without any deduction or set-off at the time of placing the order for the Equipment.

6.3 IF the Customer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him or (if the Customer is a limited company) if any resolution or petition to wind up such company shall be passed or presented or if an administrator over the whole or any part of such company's under taking property or assets shall be appointed then if delivery of the Equipment has been effected the invoice shall immediately become due and payable by the Customer; if delivery has not been so effected then the Company may at its option cancel the contract or cancel or suspend delivery.

6.4 NOTWITHSTANDING any of the terms and conditions hereof the time of payment shall be of the essence of the Contract.

6.5 INTEREST shall be payable on overdue accounts at the rate of 12 percent per annum or part thereof on the amount for the time being outstanding from the due date of payment thereof until receipt by the Company whether before or after judgment.

6.6 IF any cheque presented in payment of an invoice by the Customer shall be returned unpaid by the Customer's bank or if any agreed standing order or direct debit arrangement shall fail to operate then the Customer shall in addition to all other sums payable under the Contract pay to the Company the sum of £20 for each such event or such greater sum as shall represent the cost incurred by the Company by reason of such dishonour or failure as aforesaid.

## **7. RETENTION OF TITLE**

7.1 THE Equipment shall remain the property of the Company until payment is made in full for all sums due under all Contracts between the Company and the Customer.

7.2 UNTIL title passes to the Customer under this clause the following shall apply:



7.2.1 the Customer shall hold the Equipment as bailee for the Company, store the same in such way that it can be identified as the Company's property and keep it separate from the Company's own property and the property of any other person.

7.2.2 if payment has become due or the provisions of Clause 6.3 shall apply the Company shall be entitled to recover the Equipment from the Customer and for that purpose the Customer hereby grants to the Company its agents and employees an irrevocable license to enter any premises where the Equipment is stored in order to repossess the same.

7.2.3 in the event that the exercise by the Company of the rights conferred by this clause result in the Company repossessing the Equipment for which the Customer has paid the Company may set-off against any sums which become due from the Company to the Customer as a result thereof, any other amounts outstanding from the Customer in respect of other contracts.

7.2.4 each of the foregoing sub-clauses of this clause constitutes an entirely independent provision and shall be interpreted separately from the remainder.

## **8. SPECIFICATIONS AND PERFORMANCE**

8.1 ALL drawings specification and technical documents issued by the Company at any time in relation to the Contract are issued solely for the Customer's use in connection with the Equipment and shall not be copied or reproduced or communicated to any third party without the Company's express written agreement.

8.2 THE Company reserves the right to alter or depart from any specification or design of any Equipment sold provided that such alteration or departure shall not to a material extent adversely affect the performance of the Equipment or the quality of the workmanship or the materials sold.

8.3 UNLESS otherwise expressly agreed in writing any performance figures, quoted or referred to in any specification or other document are estimates only based on assumed conditions in a well managed office with experienced adequate and efficient operatives and appropriate services and proper use of satisfactory material.

## **9. WARRANTY**

9.1 THE Company will make good by repair or exchange (at its option) such of the Equipment or part thereof which is shown to its reasonable satisfaction to have proved defective in materials or workmanship during the Warranty Period on the following terms:

9.1.1 any defect in or failure of the Equipment must be notified to the Company in writing as soon as practicable and in any event no later than five days after discovery.



9.1.2 the Equipment must be unmodified, have been properly used under working conditions and have been properly stored installed and maintained.

9.1.3 before returning the Equipment or any part thereof the Customer must obtain a return authorisation from the Company and details of the Company's returns procedure which must be fully complied with.

9.1.4 the Equipment or part to be returned must be delivered to the Company's premises in its original packaging together with supporting documentation showing full description of the alleged fault and quoting the relevant returns number.

9.1.5 all delivery charges for carriage to and from the Company's premises to be paid by the Customer and reasonable expenses will be reimbursed.

9.1.6 where parts only are returned the Company shall not be responsible for installing any such part after repair or exchange.

9.1.7 the Company may elect to carry out any repairs at the premises of the Customer and if so is electing then the Customer shall provide the Company's employees or agents with free access to the place of installation and free access to any service or facilities that may be required to repair the Equipment.

9.1.8 if it so elects the Company may require the Customer to return the Equipment or part direct to the manufacturer for repair or exchange in which case such repair or exchange on the part of the manufacturer shall satisfy the Company's obligations under this clause 9.

9.1.9 the foregoing warranty shall only apply to any replacement Equipment or parts thereof supplied by the Company under this warranty for the balance of the warranty period applicable to the Equipment sold.

## 10. CONTRACT

10.1 SUBJECT to the foregoing all conditions, terms, and representations, expressly implied by statute common law or usage in relation to the Equipment are hereby excluded and the Company shall be under no liability to the Customer for any loss, damage or injury, direct or indirect, resulting from defective material, faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Company, its employees or agents.

10.2 IN no event shall the Company be under any liability whatsoever and howsoever arising for any loss of use or loss of profits, interruption of business or any other indirect special consequential loss of any type arising or alleged to have arisen out of any negligent act or default of the Company in respect of the Company's obligations under such Contract.



10.3 IF the Customer deals as a consumer as defined in S. 12 of the Unfair Contract Terms Act 1977 the above provisions shall not apply and the Customers statutory rights under the Sale of Goods Act will be unaffected.

10.4 THE Company does not exclude liability for death or personal injury to the extent that it is caused by the negligence of the Company its employees or agents nor for breach of any of the undertakings as to title implied into the Contract by S. 1 2 of the Sale of Goods Act 1979

## **11. REPRESENTATIONS**

11.1 THE Company shall incur no liability to the Customer for misrepresentations by virtue of any statement made by or on behalf of the Company prior to the Contract whether orally or in any letter document or sales literature and the Customer shall not be entitled to rescind the Contract on the grounds of any such misrepresentation.

## **12. RETURNS**

12.1 THE Company shall be under no obligation to accept return of any Equipment other than as provided in Clause 9. If notwithstanding the Company shall in any particular case agree to accept return of Equipment which is not defective then it shall only do so on terms that (a) the Customer shall pay a sum in respect of the costs incurred by the Company equal to twenty-five per cent of the full invoice price subject to a minimum charge of £30 (b) the Customer shall obtain a returns authorisation from the Company and comply with the Company's returns procedure and (c) the Equipment must be delivered to the Company's premises in its original packaging.

## **13. TELECOMMUNICATIONS EQUIPMENT**

13.1 WHEN the Equipment supplied by the Company is to be used in conjunction with telecom providers' lines or apparatus then the following additional conditions shall apply:

13.1.1 telecom providers shall have the right to require modifications to be carried out to Equipment which is already installed and in use. Any modifications required will be carried out at the Customer's expense. In no event shall the Company be liable to damages, loss or injury to telecom providers' equipment or personnel in connection with or arising out of the Customer's act or neglect, with the Customer providing complete indemnity to the Company in such case.

## **14. FORCE MAJEURE**

14.1 THE Company shall not be liable for any delay or failure in performance of its obligations under the Contract which is due to or results from any circumstances beyond its reasonable control including but not limited to delays or defaults of suppliers or the defaults of any subcontractor, war, strike, lock-out, pandemic lockdown, trade dispute, flood, accident to plant or machinery, shortage of materials and labour. In any such event the Company shall be



entitled to delay or cancel delivery of the Equipment. If due to any such event the Company has insufficient stocks to meet all of its commitments the Company may apportion available stocks between its customers at its sole discretion.

## 15. CANCELLATION

15.1 NO Contract or order may be cancelled without the Company's written consent. In the event that cancellation is agreed for whatever reason the Customer shall indemnify the Company against all costs, claims, loss and expense occasioned thereby including any consequential loss and loss of profits.

## 16. GENERAL

16.1 IF at any time one or more of the above Conditions becomes in whole or in part void, invalid or unenforceable then the remainder of these Conditions shall nevertheless remain valid and enforceable.

16.2 THE construction, performance and validity of the Contract and of these Conditions shall in all respects be governed by the laws of England.

16.3 ASSOCIATED company shall mean A3A Energy or any Subsidiary thereof and 'subsidiary' having the meaning as defined by section 736 of the Companies Act 1985.

## 17. DATA PROTECTION

17.1 THE COMPANY will act as data controller and data processor during the time required to complete the order and comply with the requirements of any applicable government OLEV grant applications and legal notifications to Distribution Network Operators (electricity providers).

17.2 STANDARD terms outlined below and contained within the SCOPE EUROPE Standard Data Protection Clauses of May 2019 where the COMPANY acts as the RECEIVING PARTY and the CUSTOMER acts as the TRANSFERRING PARTY.

[https://scope-europe.eu/fileadmin/scope/files/SDPC\\_Standard\\_Data\\_Protection\\_Clauses.pdf](https://scope-europe.eu/fileadmin/scope/files/SDPC_Standard_Data_Protection_Clauses.pdf)