



**STANDARD CONDITIONS OF SALE**  
**JOHNSON MATTHEY BATTERY SYSTEMS SP Z O.O.**

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# General Terms and Conditions of Sale

## 1. DEFINITIONS

“Company” means Johnson Matthey Battery Systems sp. z o.o. a limited liability company with its registered office in Gliwice, Poland;

“Customer” means an undertaking whose order has been accepted by the Company;

“Terms and Conditions” mean these Terms and Conditions of Sale;

“Goods” mean the products intended to be sold by the Company to the Customer pursuant to the Customer’s order;

“Place of Delivery” means the place defined in the order confirmation form issued by the Company as the place of delivery of the Goods, and in case when it is not indicated – the Company’s warehouse.

## 2. GENERAL PROVISIONS

2.1 The Terms and Conditions are an integral part of all the sale agreements concluded by the Company with the Customers and all their terms apply to each of the sale agreement concluded by the Company with the Customers, unless otherwise expressly agreed by the parties.

2.2. The valuation, acceptance of orders and the delivery of the Goods by the Company shall be made in accordance with these Terms and Conditions, and any departures from them require the Company’s express acceptance in writing, given by an authorised person.

2.3 A variation of these Terms and Conditions is valid only if it is in writing and signed by or on behalf of the Company and the Customer.

2.4. Any agreed amendments from these Terms and Conditions in any particular order confirmation shall not mean that the Company accepts such amendments for future orders.

2.5. These Terms and Conditions exclude the use of any other terms and conditions (contract templates) accepted, issued or applied by the Customer (defensive clause). In the case of a conflict between the content of an order and these Terms and Conditions, these Terms and Conditions will prevail, unless otherwise agreed expressly in the order confirmation.

By placing an order, the Customer accepts the Terms and Conditions without any reservations and accepts that the general purchase terms and conditions of the Customer will not be applicable and if the order provides otherwise, it is not accepted by the Company.

2.6 Confirmation by the Company of receipt of an inquiry, order or other statement of the Customer addressed to the Company does not constitute the acceptance of the order or any other statement for contractual purposes.



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2.7. The Company's confirmation of a Customer order may only be communicated by the Company sending a confirmation of order by e-mail or post to the Customer, by an authorized Company representative or by the commencement of fulfilling the order by the Company which is promptly communicated to the Customer. The Company may make any confirmation of order conditional upon receipt of any security (bonds, guarantees etc) it may require prior to manufacture of the Goods.

2.8. Should any of the provisions of these Terms and Conditions turn out to be invalid, ineffective or unfeasible for any reason, such invalidity, ineffectiveness or unfeasibility shall not affect other provisions of these Terms and Conditions.

### 3. PRICES

3.1. Price information includes prices effective on the date of issuing of this information by the Company, and the price includes (unless otherwise stated in the order confirmation by reference to an appropriate Incoterm) the cost of all packaging but shall not include transport insurance or the costs of transport which in each case will be covered by the Customer. The prices will be effective for 30 days from the date of issuing the price information unless otherwise agreed with the Company in writing, after this point they can be changed by the Company without a prior notice to the Customer. For the avoidance of doubt, price information does not constitute an offer within the meaning of the Polish Civil Code.

3.2. Unless the Company stated otherwise, prices indicated by it are net prices without taking into account any taxes, customs duties or fees which can be imposed by any authority in any country in connection with the sale of the Goods. Such additional taxes, duties or fees, if applicable, are calculated at the rates applicable on the day on which such obligations arose.

3.3 If there is any increase in the costs for the Company in the period between the acceptance of the Customer's order and the time in which the Company incurred the costs to produce the Goods on time, caused by factors outside of the control of the Company, in particular such as a change in the exchange rate, provisions of law, fees or taxes, a significant increase in the costs of labour, materials or other manufacture costs, the Company has the right to increase the price of the Goods in order to reflect this increase in the Company's costs. The Company also has such right where the increase in the Company's costs occurs as a result of a change by the Customer and with Company's consent, of the date of delivery, the volume and specification of the Goods ordered and also when the cost increase was caused by the Customer's failure to provide or delay in providing necessary information or instruction. The increase in the price resulting from the above-mentioned circumstances is notified to the Customer upon the delivery of Goods.

## 4. CANCELLATION OF ORDER

An order which has been accepted by the Company can be validly cancelled by the Customer only upon a written consent of the Company and only under the condition that the Customer will reimburse the Company for any damages (including loss of profit), costs (including costs of all works and materials used or already ordered) and expenses borne by the Company as a result of cancellation of the order.

## 5. CONDITIONS OF PAYMENT

5.1 Unless stated otherwise in writing or by e-mail, the Customer is obliged to pay the price of the Goods in accordance with the conditions indicated in the confirmation of order, and the Company has the right to obtain the payment of the price even if the delivery has not been effected for reasons on the part of the Customer. A confirmation of payment will be issued only at the Customer's request.

5.2 No omission or delay by the Company in pursuing its rights and claims, both accomplished and declared by the Company to the Customer, can affect in any way or breach the rights of the Company or be treated as a waiver of these rights.

5.3 The Company may issue to the Customer interim invoices where an order may require more than three months to fulfil.

5.4 Subject to different terms agreed in writing or by e-mail between the Customer and the Company, the Company will issue an invoice to the Customer for the Goods on the day of delivery or within 7 days after the delivery of the Goods.

5.5 If the Customer does not make a payment at the due date, without prejudice to any other of its rights, the Company may, without an additional notice, to the extent allowed by the law:

- a) withdraw from the contract or suspend further deliveries to the Customer; and
- b) credit every payment made by the Customer towards such liabilities of the Customer (also created under other contract concluded between the Company and the Customer) which the Company considers to be appropriate; and
- c) charge the Customer for interest on the amount not paid at the due date, in the amount of the maximum interest permitted by the provisions of Polish law,
- d) accelerate the payment of all other liabilities of the Customer that are not due yet.

## 6. OWNERSHIP TITLE TO THE GOODS

6.1 Until the Customer makes the full payment for the Goods, the title to the Goods remains with the Company. The Customer should keep them in the Customer's possession for all this time and have them under control and not remove them from the Customer's premises without the Company's consent, and subject to point 6.3, the Customer should not sell or dispose of the Goods in any way. Payment for the Goods should be made in pecuniary form (i.e. with cash or bank transfer to the account of the Company). Payment in a form other than pecuniary one is only possible upon the prior written consent of the Company. Payment by set-off is excluded.

6.2 Until the title to the Goods is transferred to the Customer, the Customer will keep the Goods as a dependent possessor, storing them separately from other goods that are in possession of the Customer, marked as the property of the Company. If the Customer failed to make any payments for the Goods on time, the Company may demand that the Goods be returned immediately at any time.

6.3 Upon the Company's prior written consent, the Customer may sell the Goods to which the title has not yet been transferred to the Customer and which are owned by the Company, within the usual course of business (either individually or as a part of finished products), if the proceeds from the sale are promptly transferred to the Company up to the amount of the Customer's debt to the Company.

In the event that the Customer sells any of the Goods in violation of the terms provided in point 6.3 it will be obliged to pay a contractual penalty in the amount of 20% of value of the Goods.

## 7. DELIVERY

7.1 The Company will use reasonable efforts to keep the deadlines for shipping, handing over or delivery resulting from the confirmation of order but these deadlines should only be treated as approximate and unwarranted. Such deadlines cannot be considered as a provision of the sales contract.

7.2 The Company does not bear any responsibility for not keeping the deadlines mentioned in point 7.1 and such failure to meet the deadline does not entitle the Customer to refuse payment or rescind the contract, unless the failure to meet the deadline is caused by wilful action or omission of the Company.

7.3 If the Goods are to be delivered by being collected by the Customer or on the Customer's behalf in the premises of the Company, they should be collected no later than within 7 days from the date of notification of the Customer that the Goods are ready to be collected. If the Goods are to be delivered by the Company to the place agreed between the Company and the Customer, the Customer is obliged to ensure that the Goods are collected at the destination at the moment of their delivery by the Company.



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7.4 If the Customer does not collect the Goods or give the Company appropriate instructions concerning delivery at the moment of the arranged delivery (except where the failure to collect or give instructions is caused by force majeure or an action of the Company), then, without prejudice to any of its rights, the Company may :

- a) charge the Customer for relevant costs of storage (including insurance costs); or
- b) terminate the contract with the Customer at any time within 3 months after the date of the arranged delivery and claim damages resulting from the Customer's failure to fulfil its obligations prescribed in point 7.4 above.

7.5 If an Incoterm rule has been indicated by the Company in the price information or confirmation of order, the risk of damage to or loss of the Goods passes to the Customer in accordance with such rule and subject to the provisions of point 9.

7.6 If no Incoterm rule has been indicated by the Company in the price information or confirmation of order, or it has not been expressly agreed upon otherwise, the risk of damage to or loss of the Goods passes to the Customer:

- a) in case when the Goods are supposed to be delivered on the premises of the Company – at the moment when the Customer takes delivery of the Goods, or in the event the Customer is more than 7 days late in taking delivery of the Goods, on the expiry of the seventh day prescribed for taking the delivery; or
- b) if the Goods are to be delivered otherwise than in the premises of the Company – upon delivery or, if the Customer has not accepted the delivery of the Goods without a valid reason, when the Company has offered the Goods for delivery, subject to point 9.

7.7 The Company reserves the right to deliver the Goods in parts even if it is not provided for in the order. In case the Goods are delivered in parts, every delivery constitutes a different contract and any failure to deliver any part by the Company or any claim submitted by the Customer with respect to one or more parts of delivery does not entitle the Customer to treat the other parts of the delivery as not performed or inadequately performed.

## 8. COMPONENTS, SOFTWARE, DESIGNS

8.1 If in the Goods being the subject of sale there have been installed any components or software from the Customer or they have been manufactured based on designs or data from the Customer, either directly or by indicating the supplier of such components, software or designs, the Customer takes full responsibility for the same and bears full liability for any and all damage that might be caused by defects in such components, software, designs or by incorrect data. The Company's liability, in connection with any loss incurred by the Customer in connection with such components, software, projects or data is excluded, to the broadest extent allowed by law.

8.2 The Customer is also fully liable for any intellectual property rights to the aforementioned components, software, designs or data.

8.3 If the Company executes an order in accordance with the Customer's designs, plans or specifications the Customer will indemnify the Company against all actions, losses, damages, costs, fees or other liabilities arising from any claims against the Company for infringement of third party intellectual property rights in particular, copyrights, patents, utility models, etc.

## 9. LOSS OR DAMAGE IN TRANSPORT

If pursuant to any Incoterm rule indicated by the Company or provisions of these Terms and Conditions, the Company bears liability for the loss of or damage to the Goods in transport, this liability is subject to:

- a) in case of damage to the Goods – the Customer notifies the Company of the damage in writing immediately, no later than within three days from the date of receipt thereof by the Customer; or
- b) in case of loss of the Goods - the Customer notifies the Company that the Goods have not been delivered in writing immediately, no later than within ten days from the date of their dispatch from the Company's registered office.

In any of the above cases the liability of the Company is limited, at Company's choice, to the obligation to deliver non-defective Goods or to the amount equal to the price resulting from the invoice for lost or damaged Goods.

## 10. FORCE MAJEURE

If manufacture or delivery of the Goods is prevented, interrupted or delayed by any cause beyond the Company's control (including without limitation, Acts of God, strikes, war (declared or not) or lock-out), the Company shall have the option without incurring liability to defer the date of despatch or, depending on the relevant event, to cancel the order.

## 11. LIMITATION OF THE COMPANY'S LIABILITY

The Company excludes all liability for the warranty or any other liability on any account except for liability which cannot be excluded pursuant to the law, such as liability for wilful misconduct or fraud. The Company shall not be liable for any actions or omissions of third parties which assist the Company in performance of the obligation, as well as persons commissioned to perform the obligation.

For the avoidance of doubt and notwithstanding the above the Company shall not be liable for any indirect or consequential loss including loss of profit and any potential liability of the Company will be limited to the price of paid for the Goods.

## 12. DEFECTIVE GOODS

Without prejudice to the provisions of point 11 above, each claim of the Customer which is based on any defect of the Goods or incompatibility of these Goods with the terms of contract should be reported to the Company within seven days from the date of delivery otherwise the Customer will lose the right to invoke such defects. However, if the Customer proves later, in accordance with the Company's requirements, that such fault or defect results from defective materials or defective manufacturing, for which the Company is responsible the Company may, at its absolute discretion, remove the defects or replace the Goods. Where the Goods turn out to be defective or incompatible with the terms of the contract the Customer will store the Goods at its cost and will not return them to the Company until the Company requests the return of the Goods in writing or by e-mail.

The obligations of the Company resulting from this point can by no means apply to any Goods:

- a) the integrity of which has been breached in any way, or
- b) which have been stored in inadequate conditions or for too long, or
- c) (c) which have been used improperly or maintained inadequately or have been transported by means of transport which had met with an accident, or
- d) the quality of which has been deteriorated as a result of attaching them with a material delivered by the Customer, or
- e) that have defects which have not been reported to the Company immediately, or
- f) which have not been fully paid for by the due date.



### **13. INTELLECTUAL PROPERTY RIGHTS**

Unless agreed otherwise in writing, the Company remains the owner of any intellectual property rights related to the Goods and solutions applied to them.

The Company accepts no liability for any claims against the Customer for infringement of third party intellectual property rights arising from the use, possession, resale or offering for resale of the Goods.

The Customer shall not disclose to the third parties any confidential information obtained from the Company in connection with the sale agreement. The confidential information shall include any commercial, financial, technical and technological information about the Company and/or the Goods as well as any other information which has been qualified as confidential upon its transmission to the Customer by the Company.

### **14. DELAY OR INSOLVENCY OF THE CUSTOMER**

If the Customer allows a delay in relation to the due date of any payment in relation to the Company or breaches any contract terms or these Terms and Conditions or if the Customer becomes noticeably insolvent or if a bankruptcy petition is submitted or the declaration of bankruptcy was refused as a result of insufficient assets to conduct bankruptcy proceedings or any of the Customer's asset has been compulsorily seized or if the Customer ceases to conduct business activity or if a similar event occurs in relation to the Customer under the jurisdiction of another country, in every such case to the extent allowed by the law:

- a) The Company has the right to rescind the Contract or any part thereof without the need to set any additional deadlines;
- b) The Company will be entitled to collect and sell the Goods delivered to the Customer and not paid in full by the Customer and for this purpose it will be entitled to enter the property where the Goods are;
- c) The Company will be entitled to withhold any further deliveries to the Customer until the cessation of the aforementioned circumstances or to refuse to deliver any further Goods to the Customer and to resell other Goods ordered by the Customer irrespective of whether these Goods constitute the whole or part of the order;
- d) The Company will be entitled to withhold the delivery of the Goods or any part thereof until the payment is made in full;
- e) The Company will be entitled to accelerate of all other obligations of the Customer which are not due yet;
- f) If the delivery of the Goods is resumed, the Company will be entitled to demand a prepayment for the Goods even if the existing conditions state otherwise;

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- g) The Customer will be obliged to redress damage to the Company in full amount, including the lost profit, suffered as a result of the above circumstances and to cover all costs and expenses connected with take-over, storage, insurance and sale which have to be incurred in the interest of the Company until the actual payment is made in full amount.

### 15. GOVERNING LAW

These Terms and Conditions and orders and all matters connected with them are governed by the law of the Republic of Poland and all the disputes connected with these Terms and Conditions and orders and all matters connected with them will be submitted to the jurisdiction of a Polish court competent for the registered office of the Company.

### 16. LANGUAGE VERSIONS

These terms and conditions have been drawn up in the Polish and English language version. The Polish language version will be the basis of interpretation.

### 17. SANCTIONS

The Customer agrees:

- a) not to use the Goods, or any products or other items developed from, or using, the Goods (together the "End Products") in any military application or any application related to weapons of mass destruction; and
- b) not to sell or otherwise supply the Goods or the End Products to any individual, entity or body where the Company has any grounds for suspicion that this will result in the Goods or the End Products being used in such applications described above, nor to any party who is subject to a prohibition or proscription under any list operated by a government organisation or entity.

The Company may, in addition and without prejudice to the other remedies that may be available, immediately terminate its relationship with the Customer at any time without notice of default or legal action being required and without being liable to pay compensation of any kind whatsoever for damage caused if entering into a contract and/or performing any obligations or exercising any rights under such contract would, in the Company's reasonable opinion, cause the Customer or the Company to violate one or more provisions pursuant to any sanctions legislation and/or regulations in the broadest sense (whether issued by the EU, the US, the UN or any other body) or any other such rule or legislation that may apply from time to time.



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The Customer shall indemnify the Company for any loss or other damage that may be incurred as a result of the Customer breaching this condition and/or any termination of an agreement pursuant to this condition.

### **18. ANTI-BRIBERY AND CORRUPTION**

Customer shall not, directly or indirectly, pay, offer, promise to pay or authorise the payment of, any monies or financial or other advantage in violation of any applicable foreign or domestic laws, statutes or regulations, relating to anti-bribery and anti-corruption, as amended from time to time, including, without limitation, the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977 ("Anti-Corruption Laws").

Customer shall ensure that:

- a) its officers, directors, employees and direct or indirect beneficial owners or shareholders, and b) any party acting on behalf of Customer

will not in connection with any relationship with the Company, directly or indirectly, pay, offer, promise to pay or authorise the payment of, any monies or financial or other advantage in violation of Anti-Corruption Laws.

The Company may terminate any relationship with the Customer immediately upon written notice to the Customer if the Company determines in good faith that the Customer has breached this clause.

The Customer shall indemnify the Company from any claims, suits, investigations, penalties and fines of any kind arising from any breach of this clause and this clause shall survive any termination of a contractual relationship between the Customer and the Company.