

ELLEGO POWERTEC OY GENERAL
TERMS AND CONDITIONS OF PURCHASE
01/2013

1. Application of General Terms and Conditions of Purchase

1.1 These General Terms and Conditions of Purchase (“**General Terms**”) of Ellego Powertec Oy, business identity code 0315494-5 (“**Ellego**” or “**Party**”) shall be applied to the sale and purchase of the Products and/or related Services provided by any supplier entity or company (“**Supplier**” or “**Party**”) to Ellego, unless otherwise agreed in duly signed written agreement between the parties (“**Purpose**”). These General Terms form an integral part of Supplier’s quotation, the contract document(s) which they are attached to and, together with any attachment(s), constitute the agreement between Ellego and the Supplier. Deviations from these General Terms of are valid only if expressly agreed upon in writing.

2. Definitions

2.1 “**Claim**” means any and all claims, suits, actions, demands or proceedings which may be asserted against Ellego or its direct or indirect customers regarding Scope of Supply.

2.2 “**Confidential Information**” means any information and material in whatever form disclosed to one Party by the other Party and either marked as confidential or should be understood to be confidential.

2.3 “**Contract**” means a written duly signed agreement for the purchase and delivery of the Product and/or related Services concluded between the Parties, including these General Terms and any other documents incorporated therein by reference, which form an integral part thereof.

2.4 “**Intellectual Property Rights**”; “**IPR**” shall mean (i) any and all registered intellectual property rights such as patents; registered designs; utility models; trademarks; copyrights and related rights thereto or any other registered or statutory intellectual property rights and (ii) any and all unregistered intellectual property rights, such as but not limited to, know-how; trade- and business secrets; corporate identity; Inventions; pending applications for any registered intellectual property rights as defined in (i) above; databases; software; firmware; business-, manufacturing- and other processes; technical information; manuals and guidelines; customer relationships or any other like intellectual property which can be presented or reproduced.

2.5 “**Pre-existing IPR**” shall mean Intellectual Property Rights existing on the date of entrance into force of the Contract or developed independently and without using any material or information provided by the other Party. Pre-existing IPR shall include, without limitation thereto, Supplier’s technology platform and generic power electronic product modules developed independently by the Supplier. Pre-Existing Intellectual Property Rights shall remain vested in the Party owning it.

2.6 “**Product**” means the object(s) of sale and purchase under these General Terms including package, which object(s) shall be defined in in the applicable Contract.

2.7 “**Services**” means the services the Supplier has agreed to perform to Ellego under these General Terms and subject to the Contract. Services may consist of design, development, implementation, commissioning, support and maintenance or other elements described more detailed in the Contract.

2.8 “**Scope of Supply** means the scope of supply of the Product and the Services agreed in the Contract.

2.9 “**Specifications**” means at each time existing and mutually in writing agreed Specification(s) for each Scope of Supply.

3. Scope of Supply and Availability

3.1 Each Scope of Supply shall meet the Specifications and other requirements as agreed between the Parties in writing. Changes in the Specifications, the agreed requirements and any other change that may affect the quality, fit, form and function of any Scope of Supply is subject to Ellego’s prior written approval. Supplier shall ensure the feasibility of any Specifications and the requirements.

3.2 Packing, labelling and bar coding of the Scope of Supply shall be carried out as instructed by Ellego. If Ellego has not given any instructions, the Products shall be packed in accordance with the best commercial practice to prevent damage to or deterioration of the Scope of Supply during transportation and storage. Supplier agrees to inform Ellego of any relevant specifics relating to the storage of the Scope of Supply.

3.3 Supplier agrees to inform Ellego about the country of origin of the Scope of Supply and any export or re-export restrictions and regulations and about the export control classification numbers (ECCN) relating to the Products.

3.4 Supplier agrees to proactively co-operate with Ellego in evaluation of the environmental aspects of the Product(s) and their packaging including but not limited to recycling and reuse possibilities.

3.5 Supplier guarantees the availability of the Product(s), spare parts and maintenance for 10 years from the last delivery of a given Product on reasonable commercial terms. If Supplier discontinues to manufacture a given Product, Supplier shall notify Ellego in writing about this at least 12 months prior to the intended date of discontinuation, in order to allow Ellego to place an end-of-life order before the discontinuation. Such ordered Products shall be delivered in one delivery or several partial deliveries in accordance with a separate written agreement between the Parties and within 12 months from the end-of-life order date

4. Intellectual Property Rights

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01/2013

- 4.1 Unless otherwise expressly agreed in writing, this Agreement has no effect on the Pre-existing Intellectual Property of each Party.
- 4.2 All drawings, technical documents, tooling, data, software and other material disclosed or provided by Ellego to Supplier as well as material provided by Supplier to Ellego as a part of the delivery ("Material") shall vest in and be deemed to be Confidential Information of Ellego, unless otherwise agreed between the Parties in writing. Ellego shall have and obtain exclusive rights in all aspects including without limitation Intellectual Property Rights to such Material.
- 4.3 Supplier shall be responsible for such Material while in its care and shall mark or otherwise identify them as Ellego's property. Supplier shall return or deliver such Material to Ellego upon the termination of relevant order or at Ellego's request (if not delivered as part of the delivery). Supplier shall not without Ellego's prior written consent use, copy, reproduce, hand over or in any other way utilize such Material. Unless otherwise agreed in writing, Ellego shall have and obtain the exclusive rights in all aspects, including without limitation all Intellectual Property Rights worldwide and in perpetuity, in or pertaining to the Products or part thereof to the extent customized by or for Ellego and to their Specifications. If requested by Ellego, the Supplier shall provide the drawings or Specifications of the customized Products or part thereof.
- 4.4 Ellego may free of charge, sell, manufacture, have manufactured and/or otherwise use, license and/or commercialize any of the customized Products or customized part thereof without charge. Supplier shall not directly or indirectly manufacture, sell or otherwise use or commercialize any such customized Product(s) or customized part thereof for or to any other party (including itself or any of its Affiliated Companies) without Ellego's prior written consent.
- 5. Ordering, Delivery and Time of Delivery**
- 5.1 Supplier's offer shall be binding. Ellego shall not have any minimum purchase commitments for Product(s). Any purchase order that Ellego wishes to place with Supplier shall be submitted by electronic mail, post, telefax or any other agreed manner to the agreed point of contact. Supplier shall send its written confirmation of each purchase order at the latest within 3 days from the date of the purchase order. If no such confirmation is received by Ellego, the purchase order shall be deemed accepted as such. Each Party shall have the right to require correction of obvious calculation and typing errors.
- 5.2 The term of delivery is DAP. The term of delivery refers always to each time applicable Incoterms delivery term. Title and risk of loss to the Products shall pass to Ellego upon delivery. The time of delivery is specified in the Contract.
- 5.3 If a delivery is delayed for reasons attributable to Supplier for more than 14 days, Ellego may cancel the delayed quantity or request expedited delivery e.g. though air freight. Neither early nor partial deliveries are allowed, unless separately accepted by Ellego in writing.
- 5.4 Time is of the essence. If a Party finds that a delay will occur or is likely, the Party shall without delay inform the other Party in writing of the delay and of the effects of the delay on the Agreement. If Supplier fails to provide notice of the delay then Ellego shall be entitled to twice the amount of liquidated damages specified below.
- 5.5 If a delivery is delayed, Ellego is entitled to liquidated damages as fair and reasonable pre-estimate of damages. The liquidated damages payment shall be five percent (5%) of the price of the delayed Products for each beginning week of delay. The liquidated damages shall not in total exceed twenty-five percent (25%) of the price of the delayed Products. The liquidated damages payment does not exclude Ellego's right to compensation for damage exceeding the liquidated damages paid. Buyer shall not be obliged to prove actual damage in order to be entitled to the liquidated damages.
- 6. Prices, invoicing and terms of payment**
- 6.1 The prices charged for the Products and/or Services and the applicable terms of payment have been specified in the Contract between the Parties.
- 6.2 Unless otherwise agreed in writing, the prices specified in the Contract shall be all inclusive including i.e. the Products, packaging, any rights granted to Ellego's and all Supplier's obligations hereunder and all public charges determined by the authorities and effective on the effective date of the Contract, with the exception of value added tax. Value added tax shall be added to the prices in accordance with the then current regulations. Supplier may not charge any additional amounts unless otherwise expressly agreed in writing.
- 6.3 Neither Party may set off other Party's claim or receivables.
- 6.4 The term of payment is 60 days net from date receipt of the invoice. Supplier shall be entitled to invoice the Products upon delivery. Interest on overdue payments shall accrue in accordance with the Interest Act of Finland.
- 7. Subcontractors**
- 7.1 Supplier shall not have the right to subcontract its obligations under this Agreement without the prior written consent of Ellego, such consent not to be unreasonably withheld or delayed.
- 7.2 Supplier shall ensure that its agreements with its subcontractors are consistent with the Contract and that its subcontractors comply with such agreements. Supplier shall be liable for the performance of its subcontractor as for its own.
- 8. Quality, Acceptance Procedures and Compliance**

ELLEGO POWERTEC OY GENERAL
TERMS AND CONDITIONS OF PURCHASE
01/2013

8.1 The Product quality acceptance and rejection process is separately agreed in more detail in the Contract. Supplier agrees to measure and maintain records of the out-going quality level of the Product(s) and confirm that the Products meet the Specification(s). Upon request, Supplier shall submit to Ellego Supplier's Product inspection and testing records. Supplier agrees to without delay inform Ellego of any relevant quality related issues without delay.

8.2 Ellego has no liability to conduct incoming inspections.

8.3 Supplier agrees to comply with applicable laws and regulations and conduct its business in accordance with high ethical standards. Supplier's obligations shall include, but are not limited to, compliance with (i) human rights in the spirit of internationally recognized social and ethical principles such as UN Declaration of Human Rights and ILO Conventions, (ii) the Business Charter for Sustainable Development: Principles for Environmental Management (published by the International Chamber of Commerce 1991). Supplier further agrees to comply with applicable anti-bribery legislation, and Supplier agrees not to improperly influence actions of another to gain unjust benefit. Supplier shall also monitor its subcontractors and take prompt and thorough actions in the event the conduct of their business is questioned.

8.3 Ellego reserves the right, by itself or through its appointed representative, during regular business hours and following reasonable notice to Supplier, to inspect Supplier's and/or its subcontractors physical production premises and Supplier's quality control procedures, in order to verify compliance with the Contract, the Specifications, the manufacturing process and other standard industry practices and procedures.

8.4 Ellego's acceptance of Product(s) or auditing of Supplier's premises or procedures shall not release Supplier from any of its obligations and liabilities under these General Terms.

9. Warranty

9.1 Supplier warrants all Products to be free from defects in design, materials and workmanship for a period of 28 months from the date of delivery to Ellego. The warranty includes further that the Products shall:

- (i) be in working condition;
- (ii) be fit for the purpose for which they are intended; and
- (iii) strictly conform to the Specification(s).

9.2 If any Product(s) do not meet the warranties, Ellego may in Ellego's sole option and upon notice to Supplier, (i) require Supplier to repair or replace the Product(s) within such period of time as Ellego may specify at Supplier's sole risk and expense and at premises appointed by Ellego, (ii) repair the Products or cause the Products to be repaired by any third party at Supplier's sole risk and expense, or (iii) terminate the

Contract in whole or in part without incurring any liability to Supplier if Ellego reasonably considers that none of the actions mentioned in (i) through (ii) is feasible or effective to attain the purpose of the Contract. Ellego has the right to deduct the value of the defective Product(s) from any invoice of Supplier or if no such invoices exist, the right to have a full refund for the defective Products.

9.3 Subject to limitation of liability agreed in section 14, Ellego shall be entitled to full compensation for any and all consequences incurred.

9.4 Supplier undertakes to offer repair, maintenance and spare part sales service after the expiry of the warranty period for a period of 5 years on reasonable terms and conditions.

9.5 This warranty remedy is in lieu of, not in addition to, any other remedy available at law or in equity.

10. Indemnification

10.1 Supplier shall indemnify Ellego and Ellego's direct and indirect customers against and hold Ellego harmless from any and all consequences of Claim(s) related to and/ or arising from

- (i) product liability, product safety, personal injury and/or death, loss of and/or damage to property,
- (ii) infringement or alleged infringement of Intellectual Property Rights,
- (iii) which may be attributable to Product(s) or the use thereof.

10.2 Supplier agrees to defend at Supplier's risk and expense such Claim(s) with counsel acceptable to Ellego, at Ellego's prior written request for such defence.

10.3 In relation to any Claim to which any of the indemnities in this section 10 relate, Ellego shall as soon as reasonably practicable; (i) notify Supplier of the Claim (ii) give sole and complete control of any defence or settlement of the Claim to Supplier; (iii) at the expense of Supplier, co-operate and assist to a reasonable extent with Supplier's defence or settlement of the Claim; (iv) make no settlement or admission in relation to the Claim without the prior written consent of Ellego.

10.4 In addition to Supplier's indemnity obligation above, Supplier shall at its option and at no expense to Ellego: (i) obtain for Ellego and its direct and indirect customers the right to use, sell or re-sell said Product(s); (ii) modify the Product(s) so that it becomes non-infringing, provided that as modified the Product substantially meets the Specifications; or (iii) substitute an equivalent product reasonably acceptable to Ellego and extend this indemnity to that equivalent product.

11. Confidentiality

ELLEGO POWERTEC OY GENERAL
TERMS AND CONDITIONS OF PURCHASE
01/2013

- 11.1 Unless there is a valid and binding non-disclosure agreement between the Parties, the provisions of this section 11 shall apply to these General Terms. In the event of any discrepancy between the said non-disclosure agreement and the content of these General Terms shall prevail.
- 11.2 Each Party shall keep in confidence all Confidential Information and shall not disclose the Confidential Information to any third party or use the Confidential Information for any purpose other than for the purpose of these General Terms.
- 11.3 A receiving Party shall have the right to:
- (i) copy Confidential Information only to the extent necessary for the purpose of these General Terms; and
 - (ii) disclose Confidential Information only to those of its employees and sub-contractors fulfilling the obligations of this Agreement who need to know Confidential Information for the purpose of these General Terms.
 - (iii) disclose Confidential Information to its own advisors provided that such advisors are bound by confidentiality provisions at least as restrictive as contained in this section 11.
- 11.4 Notwithstanding the foregoing the confidentiality obligation shall not be applied to any material or information:
- (i) which is generally available or otherwise public other than by a breach of these General Terms on the part of the receiving Party; or
 - (ii) which the Party has received from a third party without any obligation of confidentiality; or
 - (iii) which was in the possession of the receiving Party prior to receipt of the same from the other Party without any obligation of confidentiality related thereto; or
 - (iv) which a Party has developed independently without using material or information received from the other Party.
- 11.5 Each Party shall have the right to disclose Confidential Information to the extent such disclosure is required pursuant to a law, decree, or other order issued by the authorities or judicial order provided that the Party shall inform the other Party prior to such disclosure and shall use all reasonable endeavours to protect the Confidential Information to the extent possible.
- 11.6 Each Party shall cease using Confidential Information received from the other Party promptly upon termination of the Contract or when the Party no longer needs the Confidential Information in question for the purpose of the Contract and, unless the Parties separately agree on the destruction of such material, return the material in question and all copies thereof.
- 11.7 Each Party shall, however, be entitled to retain copies required by law or regulations. Each Party warrants the observance and proper performance of this section 11 by all of its subcontractors and other parties to which Confidential Information has been disclosed.
- 11.8 The rights and obligations under this section 11 shall survive the termination or expiration of the Contract and shall remain in force for a period of 5 years from the date of disclosure.
- 12. Damages and limitations of liability**
- 12.1 Neither Party shall be liable for any indirect or consequential damage.
- 12.2 Both Parties shall be responsible for taking back-up copies of data and data files and for verifying the functionality of such back-up copies. Neither Party shall be liable for the loss of, damage to, nor alteration of data or data files of the other Party due to any cause and the resulting damages and expenses incurred, such as expenses based on the re-creation of data files.
- 12.3 The limitations of liability shall not apply to:
- (i) damages caused by wilful misconduct or gross negligence; or
 - (ii) breach of confidentiality provisions in section 11; or
 - (iii) Claims and consequences covered by sections 9 (Warranty) and 11 (Indemnity and Defence).
- 12.4 Supplier shall at all times maintain in force, and upon request give evidence of, fully adequate general liability insurance policy and coverage, in adequate coverage amounts which may be reasonably specified by Buyer and naming Ellego as an additional insured and waiving Supplier's and its insurers' rights of subrogation and recovery against Ellego, from a recognized and reputable insurance company to cover any and all obligations attributable to Supplier's potential liability under the Contract.
- 13. Assignment**
- 13.1 Supplier shall have no the right to assign the Contract or any of its rights or obligations hereunder to any third party without the prior written consent of Ellego. Notwithstanding the foregoing each Party may transfer its receivables under the Contract to a third party.
- 14. Applicable law and settlement of disputes**
- 14.1 These general conditions shall be governed by Finnish law.

14.2 Any dispute arising out of or in connection with these General Terms and/or an Contract shall be finally settled in arbitration by one (1) or more arbitrators in accordance with the Rules for Expedited Arbitration of the Central Chamber of Commerce in Finland. The place of arbitration shall be the city of Helsinki and the arbitration shall be conducted in the English language, unless otherwise mutually agreed. The arbitration award shall be final, binding upon the Parties and enforceable in all jurisdictions.

14.3 Either Party, before or during any legal proceedings, may apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect that Party's interests in pending completion of the legal proceedings.

15. Other Provisions

15.1 Both Parties act in their own name and on their own behalf. Neither Party has a right to enter into any agreements or other commitments on behalf of the other Party.

15.2 A failure of a Party to insist upon the performance of any or more of the terms or conditions of these General Terms or a waiver of any term or condition of these General Terms will not be deemed to be a waiver of any rights or remedies the Party may have in subsequent similar situations.

15.3 If any provision in these General Terms is found or becomes invalid, unlawful, or unenforceable to any extent, the provision in question will be severed from the remaining provisions of these General Terms, which will continue to be valid and enforceable to the fullest extent permitted by law.