

POWERPERFECTOR PLC

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF PRODUCTS AND/OR SERVICES

1 Interpretation

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

Acceptance Form the form sent by the Company to the Purchaser accepting the Purchaser's order on the terms of these Conditions.

Company powerPerfeCTOR plc (Registered Number: 05106220) whose registered office is at 1 – 10 Praed Mews, London W2 1QY.

Company's Equipment any equipment, including tools, systems, cabling or facilities, provided by the Company or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Purchaser.

Conditions these standard terms and conditions of the Company.

Confidential Information belonging to a party means all information (whether written, oral or in electronic form) concerning the business and affairs of that party that the other party obtains or receives as a result of the discussions leading up to or the entering into or the performance of a Contract.

Contract any contract between the Company and the Purchaser for the sale and purchase of the Products and/or Services, incorporating these Conditions.

Delivery Point the place where delivery of the Products is to take place under condition 4.

In-put Material all documents (including, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form), information and materials provided by the Purchaser relating to the Services, including computer programs, data, reports and specifications.

Installation Date the date for installation of the Products as agreed between the parties from time to time.

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.

Load	Power consumed by the electrical equipment downstream of the Product after installation.
Losses	direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of revenue, loss of data, loss of business, loss of reputation, loss or damage to property, loss arising from injury to or death of any person, loss of opportunity to deploy resources elsewhere, depletion of goodwill and similar loss), costs, damages, charges or expenses.
Manual	the operating, installation and maintenance manuals, user instructions, technical literature, on-line help and all other related materials in eye-readable form (if any) in respect of the Products, which describe the specifications, functions and facilities of the Products, and provide the relevant information to enable the user to use the Products, as provided by the Company from time to time.
Products	each powerPerfector unit and any other products agreed in the Contract to be supplied to the Purchaser by the Company (including any part or parts of them) details of which are more specifically set out in the Acceptance Form.
Purchaser	the person, firm or company who purchases the Products and/or Services from the Company.
Purchaser's Equipment	any equipment, systems, cabling or facilities provided by the Purchaser and used directly or indirectly in the supply of the Services.
ROI	return on investment.
Services	the Services (if any) to be provided to the Company in respect of the installation of the Products at the Purchaser's premises and any other services to be provided by the Company to the Purchaser as set out in more detail in the Acceptance Form.
Warranty	the written warranty provided by the Company to the Purchaser on delivery in accordance with these Conditions, as amended from time to time.

- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these Conditions.

2 Application of Terms

- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document), notwithstanding the date on which any such other terms and conditions are provided to the Company.
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Purchaser's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document(s) being referred to in the Contract.
- 2.3 These Conditions apply to all the Company's sales of the Products and/or the provision of the Services and any variation to these Conditions and any representations about the Products and/or Services shall have no effect unless expressly agreed in writing and signed by the Company. The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Products and/or Services by the Purchaser from the Company shall be deemed to be an offer by the Purchaser to buy the Products and/or Services subject to these Conditions.
- 2.5 No order placed by the Purchaser shall be deemed to be accepted by the Company until a written acknowledgement of order in the form of the Acceptance Form is issued by the Company.
- 2.6 The Purchaser shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an Acceptance Form to the Purchaser. Any quotation is valid for a period of 60 days only from its date of issue, provided that the Company has not previously withdrawn it.

3 Description of the Products and Services

- 3.1 The quantity and description of the Products shall be as set out in the Acceptance Form.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.3 The Services (if any) supplied under the Contract shall be provided by the Company on and before the Installation Date and at no time thereafter.

4 Delivery of the Products and Performance of the Services

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Products shall take place at the Purchaser's place of business.
- 4.2 The Purchaser shall take delivery of the Products within 30 days of the Company giving it notice that the Products are ready for delivery. In the event that delivery of the Products has not taken place within 30 days of receipt by the Purchaser of such notification from the Company then the Company shall submit an invoice in respect of those Products. Payment in respect of any invoice submitted pursuant to this condition 4.2 shall be made in accordance with the terms of condition 9.
- 4.3 Any dates specified by the Company for delivery of the Products and/or for performance of the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.4 Subject to the other provisions of these Conditions the Company shall not be liable for any Losses caused directly or indirectly by any delay in the delivery of the Products and/or Services (even if caused by the Company's negligence), nor shall any delay entitle the Purchaser to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 If for any reason the Purchaser fails to accept delivery of any of the Products when they are ready for delivery, or the Company is unable to deliver the Products on time because the Purchaser has not provided appropriate instructions, documents, licences or authorisations:
 - (a) risk in the Products shall pass to the Purchaser (including for loss or damage caused by the Company's negligence) on the first date specified for delivery by the Company;
 - (b) the Products shall be deemed to have been delivered on the first date specified for delivery by the Company; and

(c) the Company may store the Products until delivery, whereupon the Purchaser shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Company shall use reasonable endeavours in all material respects to provide the Services in accordance with the timeframe set out in the Acceptance Form.

4.7 The Company shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Purchaser's premises and that have been communicated in writing in advance to it by the Purchaser, provided that it shall not be liable if, as a result of such observation, it is in breach of any of these Conditions.

5 Purchaser's Obligations in respect of the Services

5.1 The Purchaser shall co-operate with the Company in all matters relating to the Services.

5.2 Prior to the Installation Date and throughout the duration of this Agreement, the Purchaser shall ensure that all Purchaser's Equipment is in good working order, fully maintained and operational, suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements, including, but not limited to, any statutory electricity supply parameters issued in the United Kingdom from time to time.

5.3 If the Company's performance of its obligations under these Conditions in respect of the Services is prevented or delayed by any act or omission of the Purchaser, its agents, subcontractors, consultants or employees, the Company shall not be liable for any Losses sustained or incurred by the Purchaser that arise directly or indirectly from such prevention or delay.

5.4 The Purchaser shall be liable to pay to the Company, on demand, all reasonable Losses sustained or incurred by the Company that arise directly or indirectly from the Purchaser's fraud, negligence, failure to perform or delay in the performance of any of its obligations under these Conditions, subject to the Company confirming such Losses to the Purchaser in writing.

6 Non-Delivery

6.1 The quantity of any consignment of Products as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Purchaser on delivery unless the Purchaser can provide conclusive evidence proving the contrary.

6.2 The Company shall not be liable for any non-delivery of Products (even if caused by the Company's negligence) unless the Purchaser gives written notice to the Company of the non-delivery within [7] days of the date when the Products would in the ordinary course of events have been received.

6.3 Any liability of the Company for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note in respect of the non-delivered Products.

7 Risk/Title

7.1 Subject to condition 4.5, the Products are at the risk of the Purchaser from the time of delivery.

7.2 Ownership of the Products shall not pass to the Purchaser until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Products; and
- (b) all other sums which are due to the Company from the Purchaser on any account.

7.3 Until ownership of the Products has passed to the Purchaser, the Purchaser shall:

- (a) hold the Products on a fiduciary basis as the Company's bailee;
- (b) store the Products (at no cost to the Company) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
- (d) maintain the Products in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Purchaser shall produce the policy of insurance to the Company.

7.4 The Purchaser's right to possession of the Products shall terminate immediately if:

- (a) the Purchaser (being an individual) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Purchaser or notice of intention to appoint an administrator is given by the Purchaser or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Purchaser or for the granting of an administration order in respect of the Purchaser, or any proceedings are

commenced relating to the insolvency or possible insolvency of the Purchaser; or

- (b) the Purchaser suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Purchaser, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Purchaser ceases to trade; or
- (c) the Purchaser encumbers or in any way charges any of the Products.

7.5 The Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.

7.6 The Purchaser grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.

7.7 On termination of the Contract, howsoever caused, the Company's (but not the Purchaser's) rights contained in this condition 7 shall remain in effect.

8 Price

8.1 Unless otherwise agreed by the Company in writing, the price for the Products and/or Services shall be the price set out in the Company's price list published on the date of delivery or deemed delivery or the date of the performance of the Services (as relevant).

8.2 The price for the Products and/or Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts shall be as specified in the invoice to the Purchaser and which the Purchaser shall pay in addition to the price for the Products and/or Services when it is due to pay for the Products.

9 Payment

9.1 Subject to condition 9.4, payment of the price for the Products and/or Services and any other sums due pursuant to condition 8.2, is due in pounds sterling within 30 days following the date of the invoice sent by the Company to the Purchaser in respect of the Products and/or Services or at such other time as agreed between the Company and the Purchaser and set out in the Acceptance Form.

9.2 Time for payment shall be of the essence.

9.3 No payment shall be deemed to have been received until the Company has received cleared funds.

- 9.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 9.5 The Purchaser shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Purchaser has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Purchaser.
- 9.6 If the Purchaser fails to pay the Company any sum due pursuant to the Contract, the Purchaser shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3 per cent. above the base lending rate from time to time of Barclays Bank PLC, accruing on a daily basis until payment is made, whether before or after any judgment. Notwithstanding the foregoing, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

10 Quality

- 10.1 The Company warrants that (subject to the other provisions of these Conditions) the Products shall accord with the terms of the Warranty for the duration set out in the Warranty.
- 10.2 In addition to any limitation or conditions referred to in the Warranty, the Company shall not be liable for a breach of the warranty in condition 10.1 unless:
- (a) the Purchaser gives written notice of the defect to the Company within 7 days of the time when the Purchaser discovers or ought to have discovered the defect; and
 - (b) the Company is given a reasonable opportunity after receiving the notice referred to in condition 10.2 (a) to examine such Products and the Purchaser (if asked to do so by the Company) returns such Products to the Company's place of business at the Purchaser's cost for the examination to take place there.
- 10.3 In addition to any limitation or conditions referred to in the Warranty, the Company shall not be liable for a breach of the warranty in condition 10.1 if:
- (a) the Purchaser makes any further use of such Products after giving the notice referred to in condition 10.2 (a); or
 - (b) the defect arises because the Purchaser failed to follow the Company's oral or written instructions, included in the Manual or otherwise, as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; or
 - (c) the Purchaser alters or repairs such Products without the written consent of the Company; or
 - (d) the Load in respect of the Products following installation exceeds the stated kilo volt ampere **kVA** capacity of the particular Product.

- (e) The purchaser alters their building's electrical infra- structure in such a way that is it detrimentally effects the Product.
 - (f) It is shown after installation that the Maximum Demand on the incoming supply was greater than reported to the Company as the time of analysis completed by the Company to size the Product/s.
- 10.4 Subject to condition 10.2 and condition 10.3 and the terms of the Warranty, if any of or replace such Products (or the defective part) or refund the price or relevant part of the price of such Products provided that, if the Company so requests, the Purchaser shall, at the Company's expense, return the Products or the part of such Products which is defective to the Company.
- 10.5 If the Company complies with condition 10.4 it shall have no further liability for a breach of the warranty in condition 10.1 in respect of such Products.
- 10.6 Any Products which have been removed shall belong to the Company and any repaired or replacement Products shall be guaranteed on these terms and the terms of the Warranty for the unexpired portion of the 10 year period.

11 Limitation of Liability

- 11.1 Subject to condition 4, condition 6 and condition 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Purchaser in respect of:
- (a) any breach of these Conditions;
 - (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these Conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3) of the Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation.
- 11.4 IF the Purchaser uses an electrical contractor in respect of the installation of the Products other than those offered by the Company as part of the Services then the Company excludes any and all liability for Losses arising as a result of this Contract of whatever nature., save where the contractor selected by the Purchaser has been

approved in writing by the Company prior to the pre-works for the installation of the Product

11.5 Subject to condition 11.2 and condition 11.3 and as otherwise specifically stated herein:

- (a) the Company shall not be liable to the Purchaser for Losses which arise out of or in connection with the Contract; and
- (b) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Products and/or Services ordered by the Purchaser or £10,000,000, whichever is the lower.

12 Assignment

12.1 The Company may assign the Contract or any part of it to any person, firm or company.

12.2 The Purchaser shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13 Force Majeure

The Company reserves the right to defer the date of delivery of the Products and/or Services or to cancel the Contract or reduce the volume of the Products ordered by the Purchaser (without liability to the Purchaser) and shall not be liable for any breach of the Contract if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Purchaser shall be entitled to give notice in writing to the Company to terminate the Contract.

14 Confidentiality

14.1 The Company and the Purchaser hereby undertake to each other to:

14.1.1 keep confidential all Confidential Information belonging to the other; and

14.1.2 not, without the prior written consent of the other party, disclose Confidential Information belonging to that party in whole or in part to any other person save to those of its employees, agents, contractors or advisers involved in the performance of the Contract and who need to know the Confidential Information in question.

14.2 The provisions of this condition 14 shall continue to apply after the termination howsoever caused of the Contract without limit in point of time but shall cease to apply to information or knowledge which may come into the public domain other than by unauthorised disclosure by the party receiving the other party's Confidential Information.

15 Intellectual Property Rights

15.1 As between the Purchaser and the Company, all Intellectual Property Rights and all other rights in the Products and/or the Services shall belong to the Company. Nothing in the Contract is, constitutes or shall be taken to be or constitute a right or licence or the grant of a right or licence by the Company of any Intellectual Property Rights or other rights to the Company.

16 Communications

16.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Purchaser by the Company; or
- (b) (in the case of the communications to the Purchaser) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Purchaser set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Purchaser.

16.2 Communications shall be deemed to have been received:

- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

16.3 Communications addressed to the Company shall be marked for the attention of the CEO.

17 General

17.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and

the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

- 17.3 The Purchaser acknowledges that the Contract and any documents referred to therein constitute the whole and only agreement between the parties with respect to their subject matter and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating to their subject matter, except in respect of any fraudulent misrepresentation made by either party.
- 17.4 The Purchaser acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract). Nothing in this condition shall limit or exclude any liability for fraud.
- 17.5 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 17.6 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Purchaser shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 17.7 No term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 17.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.