

# POWERFINN

## GENERAL CONDITIONS OF SALE AND DELIVERY (PGC 2.3)

### 1 SCOPE

These General Conditions shall apply to all deliveries and quotations, order confirmations and contracts for the sale of products by Powerfinn Oy. The company offering or making the sale or delivery is hereinafter referred to as "Powerfinn" and the products being the object of the sale or delivery are hereinafter referred to as "the Products".

### 2 FORMATION OF CONTRACT; AMENDMENTS; QUOTATION

A contract shall be deemed to have been entered into when Powerfinn has confirmed the Buyer's order in writing.

Conflicting and/or additional terms in the Buyer's purchase order or other documents or forms shall not be binding on Powerfinn unless accepted by Powerfinn in writing. No amendments shall be effective unless agreed in writing. An order can only be cancelled with Powerfinn's written consent.

Powerfinn's written quotations shall be valid for thirty (30) days from the date thereof unless otherwise stated therein.

### 3 PRODUCT INFORMATION

Information and data contained in brochures, price lists and other materials shall be binding on Powerfinn only to the extent that they are by reference expressly included in the quotation, order confirmation or contract.

### 4 DRAWINGS AND DESCRIPTIONS

All drawings and technical documents relating to the Products or their manufacture submitted by one party to the other, prior or subsequent to the formation of the contract, shall remain the property of the submitting party.

Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than installing, commissioning, operation or maintenance of the Products. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

The Buyer acknowledges and agrees that drawings and technical documents submitted by Powerfinn will, unless otherwise agreed in writing, be in English language and in a format generally used by Powerfinn.

### 5 CONFIDENTIAL INFORMATION

Each party ("Receiving Party") shall keep confidential and use for the intended purpose only any information ("Confidential Information"), including, without limitation, information relating to businesses, products, techniques and processes, received in any form from the other party ("Disclosing Party") in connection with the business transaction covered by these General Conditions ("Purpose"). The aforementioned obligation shall in relation to a particular Confidential Information expire three (3) years after the receipt by the Receiving Party of such information and shall not include information which: (i) can be proved to have been in Receiving Party's possession before its disclosure by the Disclosing Party; or (ii) is or becomes in the public domain through no fault of the Receiving Party; or (iii) is received by the Receiving Party from a third party without a duty of confidentiality to the Disclosing Party; or (iv) is independently developed by the Receiving Party without recourse to the Confidential Information; or (v) is disclosed by the Disclosing Party after the Disclosing Party receives a written notification from the Receiving Party that the Receiving Party will not accept any further information in confidence in relation to the Purpose.

### 6 ACCEPTANCE TESTS

Powerfinn is obliged to carry out acceptance tests only if so agreed with the Buyer in writing. Possible acceptance tests shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours. If not otherwise agreed, the tests shall be carried out in accordance with the general practice applied by the Powerfinn manufacturing unit in question.

Powerfinn shall notify the Buyer of the acceptance tests in sufficient time to permit the Buyer to be represented at the tests. If the Buyer is not

represented, the test report shall be sent to the Buyer and shall be deemed to have been accepted as accurate.

If the acceptance tests show the Products not to be in accordance with the contract, Powerfinn shall without delay remedy any deficiencies. New tests shall then be carried out at the Buyer's request, unless the deficiency was insignificant.

Powerfinn shall bear all costs for acceptance tests carried out at the place of manufacture. The Buyer shall however bear all travelling and living expenses for its representatives in connection with such tests. Should any new tests be carried out at a place other than the place of manufacture, the costs of such tests shall be carried by the Buyer.

### 7 DELIVERY

All references to trade terms shall be construed in accordance with Incoterms 2010. If no such reference is made, delivery shall take place in accordance with the trade term Free Carrier FCA Powerfinn's premises (Incoterms 2010). Powerfinn is hereby authorized to procure, on the Buyer's behalf, transportation and insurance related thereto on usual terms at the Buyer's risk and expense. Unless otherwise agreed, partial deliveries and transshipment shall be permitted.

Unless expressly otherwise agreed between Powerfinn and the Buyer in writing, all times or dates for delivery given are estimates only. While Powerfinn endeavours to meet the estimated times or dates for delivery, failure to comply with such estimates shall not be a breach of contract.

If the parties, instead of specifying the date for delivery, have specified a period of time on the expiry of which delivery shall take place, such period shall start to run on the date when Powerfinn has received the Buyer's order, all information necessary for the processing thereof and any advance payment, D/C and/or other security agreed.

If delay in delivery is caused by any circumstances mentioned in [Clause 16](#) below (Force Majeure) or by an act or omission on the part of the Buyer, the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances of the case. This provision applies regardless of whether the cause for the delay occurs before or after the agreed time or date for delivery.

If delivery is delayed due to a reason attributable to Powerfinn, other than excusable causes referred to in [Clause 16](#) below (Force Majeure), and such delay causes actual damage to the Buyer, the Buyer shall be entitled to liquidated damages at the rate of 0.5 % for each completed week of delay, calculated on the price or the license fee, as applicable (excluding VAT) of the delayed Product; provided that Powerfinn's maximum liability is limited to five (5) % of the said price. The liquidated damages shall become due at the Buyer's written demand but not before delivery has been completed or the contract is terminated as specified hereinafter. The Buyer shall forfeit his right to liquidated damages if Powerfinn is not presented with a written claim for such damages within three (3) months from the time when the Product should have been delivered.

If the Buyer is entitled to maximum liquidated damages in accordance with what is stated above and if the Product in question is still not delivered, the Buyer may in writing demand delivery within a final reasonable period of not less than one week. If Powerfinn does not deliver within such final period and this is not due to any circumstance for which the Buyer is responsible, then the Buyer may by notice in writing to Powerfinn terminate the contract in respect of such part of the Products as cannot in consequence of the delay in delivery be used as intended by the parties.

If the Buyer so terminates the contract it shall be entitled to a total compensation for the loss it has suffered for the delay of maximum 10 % of that part of the purchase price which is attributable to those Products in respect of which the contract is terminated, such compensation to include the liquidated damages which are payable in accordance with above.

The liquidated damages and the termination of the contract with limited compensation, as herein provided, shall be the Buyer's sole remedy for delays. All other claims against Powerfinn based on delays shall be excluded.

If the Buyer anticipates that it will be unable to accept delivery of the Products at the delivery time, it shall forthwith notify Powerfinn thereof stating the reason, and, if possible, the time when it will be able to accept delivery. If the Buyer fails to accept delivery at the delivery time it shall nevertheless pay any part of the purchase price which becomes due on delivery as if delivery had taken place. Powerfinn shall arrange for

storage of the Products at the risk and expense of the Buyer and, upon the Buyer written request, insure the Products at the Buyer's expense.

Unless the Buyer's failure to accept delivery is due to excusable causes referred to in Clause 16 below (Force Majeure), Powerfinn may by notice in writing require the Buyer to accept delivery within a final reasonable period of not less than one week. If, for any reason for which Powerfinn is not responsible, the Buyer fails to accept delivery within such period, Powerfinn may by notice in writing terminate the contract in whole or in part. Powerfinn shall then be entitled to compensation for the loss it has suffered by reason of the Buyer's default.

#### 8 INSPECTION; RETURNS

Upon receipt of the Products the Buyer shall, without delay, using due diligence, examine the same both as to their quality and quantity. Unless the Buyer notifies Powerfinn in writing to the contrary within eight (8) days from the receipt thereof, the Products shall be deemed to have been duly received in agreed quantity and without apparent damage. No returns shall be accepted without Powerfinn's prior written authorization.

#### 9 PRICES AND PAYMENT

Unless expressly otherwise agreed in writing, the prices and license fees included in the price lists, offers or confirmation of orders of Powerfinn do not include any taxes, customs duties or other charges levied or collected outside Powerfinn's country. Unless otherwise agreed in writing, all bank charges, fees, taxes and costs for remitting payments shall be borne by the Buyer.

Payment for the Products shall be made by the Buyer to Powerfinn in such currency, time and manner as are provided for in the relevant quotation, confirmation or contract. In case no such provision is included therein, payment shall be made in Euros by an irrevocable at sight Documentary Credit (D/C) payable at and confirmed by a Bank accepted by Powerfinn. The D/C shall be in form and substance satisfactory to Powerfinn and shall reach the said Bank within fourteen (14) days from the date of Powerfinn's order confirmation. Failure by the Buyer to comply with the terms of payment shall be regarded as a fundamental breach of contract.

Where deferred payment has been agreed in writing, the time for payment shall, unless otherwise agreed, be calculated from the date of Powerfinn's invoice.

A payment shall be considered effected when it is wholly and freely at Powerfinn's disposal. In case payment is delayed, Powerfinn shall be entitled to interest on overdue payments at a rate which is the higher of (i) the maximum interest rate on overdue payments allowed in the country the currency of which is stated on Powerfinn's invoice, or (ii) the maximum interest rate on overdue payments allowed in Powerfinn's country. Powerfinn may refuse to make deliveries if the Buyer has any unpaid amounts that are due, or if Powerfinn has reason to doubt the Buyer's ability or readiness to pay. If the Buyer has not paid any amount due within two months from the due date, Powerfinn is entitled to terminate the contract and claim compensation for the loss it has incurred.

#### 10 RESERVATION OF TITLE

The Products shall remain the property of Powerfinn until paid for in full to the extent that such retention of property is valid under the applicable law. The Buyer shall at the request of Powerfinn assist Powerfinn in taking any measures necessary to protect Powerfinn's title to the Products or such other right in respect thereof as the law of the state in which the Products are situated permits Powerfinn to retain. The retention of title shall not affect the passing of risk.

#### 11 SOFTWARE

Powerfinn grants the Buyer a non-exclusive, non-transferable license to use such software as is included in the Products, subject to such terms and conditions as are specified from time to time by Powerfinn or other licensors through software licenses to be delivered in conjunction with the relevant software. If no other terms and conditions are specified in accordance with the above, those of the standard Powerfinn Software License shall apply.

#### 12 LIABILITY FOR DEFECTS; WARRANTY PERIOD

Subject to the provisions of this Clause, and Clause 15 (Limitation of Liability) below, Powerfinn warrants that the Products shall at the time of the delivery thereof be free from defects in materials or workmanship and conform to the specifications included in the quotation, order confirmation or contract. Powerfinn is however not liable for defects

arising out of materials provided by, or a design stipulated or specified by the Buyer. Powerfinn is liable only for defects, which appear under the conditions of operation provided for in the contract and under proper use of the Products. Powerfinn's liability does not cover defects, which are caused by faulty maintenance, incorrect installation or faulty repair by the Buyer, or by alterations carried out without Powerfinn's consent in writing. Further, Powerfinn's liability does not cover normal wear and tear or deterioration.

Unless expressly otherwise agreed in writing, Powerfinn's liability for defects and conformity for a Product is maximum twenty four (24) months from the date of the delivery of that Product into the custody of the carrier ("Warranty Period").

When a defect or non-conformity in a Product has been remedied by Powerfinn, the Warranty Period shall for said Product be extended for the period during which said Product has been out of operation as a result of the defect or non-conformity. No other extension of the Warranty Period shall apply.

The Buyer shall without delay, and in no case later than two weeks after the expiry of the Warranty Period notify Powerfinn in writing of any defect or non-conformity, such notice to include a description how the defect or non-conformity manifests itself. If there is reason to believe that the defect or non-conformity may cause damage, such notice shall be given immediately. Notifications of claims based on defects or non-conformities that can be discovered by examination of the Product or invoices or samples, shall however be made within fourteen (14) days after Product in question has been received by the Buyer. If the Buyer does not notify Powerfinn of a defect or non-conformity within the aforementioned time limits, it shall lose its right to have the defect or non-conformity remedied.

If any Product or part thereof fails to meet the foregoing warranties, and Powerfinn has received a written notice of it within the aforementioned time limits, Powerfinn shall, on receipt of the Buyer's notice in writing, without undue delay, at its option, either (i) deliver a replacement of the defective Product or part DDU Buyer's premises (Incoterms 2010), (ii) repair the Product or part in question, or (iii) refund the purchase price paid by the Buyer therefor, provided that such Product or part is made available to Powerfinn DDU Powerfinn's premises (Incoterms 2010) or as may be otherwise specified by Powerfinn. Defective parts which have been replaced shall become Powerfinn's property.

Unless otherwise agreed in writing, Powerfinn is not obliged to carry out dismantling or re-installation of any part.

If the Buyer has given notice as described above and no defect is found for which Powerfinn is liable, Powerfinn shall be entitled to compensation for the costs it has incurred as a result of the notice.

If Powerfinn does not fulfil its obligation to deliver a replacement, to repair a defective part or to refund the purchase price in accordance with above, the Buyer may, by written notice, fix a final time of not less than 7 days for completion of Powerfinn's obligations. If Powerfinn fails to fulfil its obligations within such final time, the Buyer may either:

- a) itself undertake or employ a third party to undertake necessary remedial works at the risk and expense of Powerfinn, provided that it does so in a reasonable manner, or
- b) claim a pro rata reduction of the purchase price of the Product up to 7% thereof.

Where the defect must be considered substantial, the Buyer may terminate the contract by written notice to Powerfinn. The Buyer is then entitled to compensation for the direct loss it has suffered up to a maximum of 15% of the purchase price of the defective Product. Where successful remedial works have been undertaken by the Buyer or a third party, reimbursement by Powerfinn of reasonable costs incurred by the Buyer shall be the full settlement of Powerfinn's liabilities for the said defect.

The above mentioned provisions set forth the exclusive remedies for claims based upon defects in or nonconformity of the Products supplied by Powerfinn, whether the claim is in contract, warranty, tort (including negligence) or otherwise. What is stated herein is in lieu of all other warranties, whether oral, written, express, implied or statutory. No implied or statutory warranties of merchantability or fitness for particular purpose shall apply. In particular, except as expressly otherwise stated herein, Powerfinn shall have no liability for any cost, expense, loss or damage, whether direct or indirect and whether consequential or not.

The products are provided the maintenance and spare part support up to 10 years of age.

#### 13 LIABILITY FOR DAMAGE CAUSED (PRODUCT LIABILITY)

Subject to the provisions of Clause 15 below (Limitation of Liability), Powerfinn shall be liable for property damage or personal injury only if it

is proved that such damage or injury was caused by gross negligence or willful misconduct on the part of Powerfinn and provided that Powerfinn is liable for such damage or injury under current legislation.

The Products are not intended for and shall not be used in connection with the use or handling of nuclear material or the construction or operation of a nuclear installation and Powerfinn disclaims all liability for any nuclear or other damages, injury or contamination, and the Buyer shall indemnify Powerfinn against any such liability, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise.

#### 14 INTELLECTUAL PROPERTY RIGHTS

The Buyer acknowledges that any and all trademarks, trade names, patents, copyrights, designs and other intellectual property rights used or embodied in or in connection with the Products are and shall remain the sole property of Powerfinn or such other party as may be identified thereon or in respect thereof. In the event that new know-how evolves or is generated in the performance of or as a result of the contract, the Buyer acknowledges that the same and all intellectual property rights therein shall belong to Powerfinn.

Powerfinn states that to the best of its knowledge and belief, the supply or intended use of the Products does not infringe any third party's rights. Nevertheless, Powerfinn expressly disclaims any liability in the event of a third party suing or threatening to sue the Buyer in respect of matters pertaining to intellectual property rights. Liability is thus excluded, without limitation, in respect of alleged infringements due to the modification of the Products or any part thereof by the Buyer or any third party or arising from the use of the Products or any part thereof with any adjunct or devices.

#### 15 LIMITATION OF LIABILITY

Save as provided in Clauses 12 and 13 above, Powerfinn shall not be under any liability in respect of defects, nonconformities, damage or injury. In no event shall Powerfinn or its subcontractors or suppliers be liable for any special, consequential, incidental or indirect damages or losses, such as loss of profit or revenues, loss of use, loss of production, cost of capital or increased expense or interruption of operation.

The aggregate liability of Powerfinn, including its subcontractors and suppliers, shall be limited to direct damage proved by the Buyer and shall not in any case exceed Euro 500.000 (five hundred thousand) or the purchase price allocable to the Product which gives rise to the claim, whichever is lower.

The Buyer shall indemnify Powerfinn against any third-party claims, including product liability claims, in excess of the liability specified in this Clause above.

Any action, claim or suit must, in order to bind Powerfinn, be instituted within two (2) years from the delivery of the Products in question into the custody of the first carrier. Unless so instituted, any claims and rights arising out of such cause shall be excluded and deemed to have been waived.

If a claim described in this Clause, or in Clause 12 or Clause 13 above, is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing. Powerfinn and the Buyer shall be mutually obliged to let themselves be summoned to the court or arbitration tribunal examining claims for damages lodged against one of them.

#### 16 EXCUSABLE DELAYS; FORCE MAJEURE

Powerfinn shall not be liable for delay in delivery or for other failure to duly fulfill its obligations if the delay or failure results from any of the following: fire, lightning, natural catastrophe, general mobilization, import, export or currency restriction or embargo, act (including failure to act) of any governmental authority, port congestion, delay or accident during transportation, war, riot, revolution, strike or other labor dispute, power failure, failure of telecommunications, general shortage of materials, default of supplier or sub-contractor for any reason, incompleteness or inaccuracy of any technical or other information which is the responsibility of the Buyer to provide, and any cause or circumstance beyond Powerfinn's reasonable control.

If Force Majeure beyond the Buyer's control prevents the Buyer from fulfilling its obligations, it shall be entitled to suspend performance thereof for a period which is reasonable having regard to all the circumstances of the case.

The party claiming to be affected by a cause or circumstance referred to above in this Clause shall notify the other party in writing without delay on the intervention as well as on the cessation of such cause or circumstance.

Regardless of what might otherwise follow from these General Conditions, a party shall be entitled to terminate the contract by notice in writing to the other, if the other party's performance of the contract is suspended under this Clause for more than six (6) months.

#### 17 GOVERNING LAW; SETTLEMENT OF DISPUTES

These General Conditions as well as all quotations, order confirmations and contracts for the sale of the Products shall be construed under, governed by and interpreted in accordance with the laws of Finland. The use of United Nations Convention on Contracts for International Sale of Goods from 1980 (as possible amended) is excluded.

Any dispute, controversy or claim arising out of or relating to any of the above or to the validity, breach or termination of contract that cannot be agreed through negotiations between the parties shall be finally settled by arbitration in Helsinki, Finland, by a sole arbitrator in accordance with the Arbitration Rules of the Finnish Central Chamber of Commerce. The arbitration shall be conducted in the English language. Judgment upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for a juridical acceptance of the award and an order of enforcement, as the case may be.

Irrespective of the above, Powerfinn shall be entitled to collect its receivables through a court of competent jurisdiction or other appropriate authority.

#### 18 EXPORT

The Products may be subject to regulations which prohibit their export to certain countries and certain persons. The Buyer shall not export or re-export, directly or indirectly, the Products or technical data related thereto, without first complying with all applicable export control regulations of any jurisdiction to which the Buyer or the Products are subject, including, without limitation, obtaining necessary export or re-export consents from relevant authorities. The Buyer shall indemnify Powerfinn against any damage, loss, liability or expense that Powerfinn may incur as a result of the Buyer's failure to comply with this clause.

#### 19 TERMINATION FOR CAUSE

Powerfinn may, without prejudice to any other of its rights, terminate any sale of a Product with immediate effect by a written notice to the Buyer if the Buyer becomes insolvent or subject of dissolution, liquidation, bankruptcy or similar proceedings or applies for judicial or extra-judicial settlement with creditors.

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