Terms of Contract

1. These Terms and Conditions of Sale shall be incorporated into all contracts of sale made by Mitsubishi Electric Europe B.V., a company registered in the Netherlands and operating through its branch registered in England (Company No. FC001516, Branch No. BR003391) (hereinafter referred to as “Mitsubishi”) for the sale of any goods and/or ancillary services related to delivery of the goods (a or the “Contract”). Any printed or other terms and/or conditions used by the person, firm or company placing the order (hereinafter referred to as the “Customer”) are excluded. Mitsubishi shall not be bound by any terms or conditions in the Customer’s order. If the Customer’s order contains any terms and conditions, then these Terms and Conditions of Sale shall take precedence over such terms and conditions in the Customer’s order which shall be deemed deleted without notice.

1.1 Amendment of any Contract can only be made by agreement between the parties and to bind Mitsubishi must be made in writing and signed by an authorised official of Mitsubishi.

2. Quotations and Acceptance of Orders

2.1 No quotation shall constitute an offer. Quotations may be withdrawn at any time.

2.2 A Contract shall only be formed upon issue of Mitsubishi’s standard acknowledgement of order form.

2.3 Mitsubishi shall not be obliged to accept any order and reserves its entire discretion in this respect.

3. Specification

Goods shall be supplied in accordance with Mitsubishi’s standard specification for the relevant type. Mitsubishi reserves the right to make such improvements and/or modifications of such specification as it or its suppliers think desirable in all circumstances.

4. Packaging

The specification for packaging the goods shall be entirely at the discretion of Mitsubishi who shall have the right to pack all goods in such manner and with such materials and in such quantities as it in its absolute discretion thinks fit and shall not be obliged to comply with any packaging instructions or requests of the Customer.

5. Delivery and Risk

5.1 a) In the case of all UK sales involving delivery within the UK the goods will be delivered by Mitsubishi to the Customer’s premises. Goods shall be at the Customer’s risk immediately on delivery into the Customer’s premises (or into custody on Customer’s behalf if sooner) and should be insured by the Customer accordingly.

b) Unless otherwise agreed, in the case of all non-UK sales involving delivery outside the UK the goods will be delivered FOB the premises or port nominated by Mitsubishi. Risk of loss or damage to the goods shall pass to the Customer upon delivery FOB the place nominated by Mitsubishi. The goods shall, once the risk has passed to the Customer in accordance with this Clause, be and remain at the Customer’s risk, at all times unless and until Mitsubishi has repossessed the goods and the Customer shall insure accordingly.

5.2 A delivery schedule should be agreed with Mitsubishi prior to placing the order. While Mitsubishi will endeavour to comply with such or any agreed time(s) for delivery, Mitsubishi shall not in any circumstances be liable for any failure to do so or any delay in delivery.

5.3 If the Customer fails to accept delivery of the goods on the agreed delivery date, then except where that failure or delay is caused by Mitsubishi’s failure to comply with its obligations under this Contract or a force majeure event, delivery of the goods shall be deemed to have been completed on the agreed delivery date. Mitsubishi may store the goods until re-delivery, in which case the Customer will be liable for all related costs and expenses including but not limited to restocking, storage and insurance.

5.4 Goods shall be signed for on receipt. Any alleged shortages, discrepancies or damage must be notified to Mitsubishi within 15 days of receipt of goods by notice in writing addressed to Mitsubishi Electric Europe B.V. Travellers Lane HATFIELD Hertfordshire AL10 9XB

For the attention of: Credit Dept.

5.5 The Customer agrees not to re-sell outside the UK any goods supplied by Mitsubishi and covered by the Export of Goods (Control) Order 1989 (or any re-enactment thereof) or the Export Control (Overseas) Regulations 1979 (as amended) or any re-enactment thereof without obtaining all necessary licences thereunder and agrees not to resell such goods in the UK to a purchaser, knowingly or being given reasonable grounds to suspect that the purchaser intends to export such goods without first obtaining such licences or a copy of such licences obtained by the purchaser, and the Customer agrees to impose upon persons purchasing such equipment obligations corresponding to those set out above.

5.6 The Customer shall ensure, and shall ensure that its directors, employees, agents, representatives, affiliates, group companies, members and any other party acting on its behalf shall comply with all applicable English, Japanese and international laws, statutes, regulations, and codes of conduct, best practice guidance relating to the lawful export of goods and/or services, goods and/or services’ international compliance, security and safety control and all applicable export control rules (together “SEC Practice”). The Customer warrants, represents and undertakes as a condition of its purchase of the goods and/or ancillary services that it shall not deal, transfer, assign or re-sell goods in breach of SEC Practice to any; embargoed country; prohibited Non-Customer (defined at Clause 8.4); a Non-Customer which is developing or otherwise involved in or developed or has otherwise been involved in the manufacture of nuclear weapons; military-use technology; chemical or biological agents (and equipment for spraying of such); a rocket or unmanned aircraft capable of carrying such; military authority; military institution or similar institution; arms/weapons manufacturer; a Non-Customer on a list of Global: Denied Persons List, Entity List, Unverified List, Specially Designated Nationalists; Designated Foreign Terrorist Organisation or Weapons of Mass Destruction Proliferators list; to a Non-Customer suspected of violating the laws and regulations of any target country through unlawful export; a Non-Customer barred from export or otherwise subject to Government sanctions; the category of the Non-Customer (or its end user) falls under the criteria of Japan’s Complementary Control, or to a Non-Customer otherwise considered a suspicious person, buyer or company. By placing the order, this Clause shall not deem payment when the amount of that payment is irrevocably credited to its bank account.

5.7 The Customer shall store goods owned by Mitsubishi in such a way that they are clearly identifiable as Mitsubishi’s property and shall maintain records of such goods identifying them as Mitsubishi’s property. All goods supplied by Mitsubishi in the Customer’s possession shall be presumed to belong to Mitsubishi (unless the Customer can prove otherwise).

5.8 Until title to the goods has passed to the Customer in accordance with Clause 6.1 Mitsubishi shall be entitled to trace the proceeds of sale of any goods owned by Mitsubishi. Such proceeds shall be held by the Customer on trust for Mitsubishi and at Mitsubishi’s request will be paid into a separate bank account.

6. Property and Risk

6.1 Mitsubishi shall retain title to the goods until it has received payment in full of all sums due in consideration with the Contract. This Clause shall not prejudice Mitsubishi’s right to make payment when the amount of that payment is irrevocably credited to its bank account.

6.2 The Customer shall store goods owned by Mitsubishi in such a way that they are clearly identifiable as Mitsubishi’s property and shall maintain records of such goods identifying them as Mitsubishi’s property. All goods supplied by Mitsubishi in the Customer’s possession shall be presumed to belong to Mitsubishi (unless the Customer can prove otherwise).

6.3 Until title to the goods has passed to the Customer in accordance with Clause 6.1 Mitsubishi shall be entitled to trace the proceeds of sale of any goods owned by Mitsubishi. Such proceeds shall be held by the Customer on trust for Mitsubishi and at Mitsubishi’s request will be paid into a separate bank account.

6.4 Customer will give not less than fourteen (14) days’ written notice to Mitsubishi before applying to the Court for appointment of an administrator. Failure to give such notice shall be deemed to be a fundamental breach of the Contract.

6.5 Customer’s right to possession of the goods will cease at the earliest of the following dates:

6.5.1 the date of a notice given under Clause 6.4 or the latest date on which such notice should have been given.

6.5.2 the date on which the Customer commits any act or makes any omission which would entitle Mitsubishi to take control of any asset or would enable any person to present a petition for winding up or to apply for an administration order in respect of the Customer or any event referred to in Clause 6.6 occurs.

6.6 If the Customer fails to make any payment (whether partial or in full) to Mitsubishi when due, compounds with its creditors, executes an assignment for the benefit of its creditors, commits an act of bankruptcy, files a petition in bankruptcy or an administration application, becomes liquidated, is wound up, liquidates or is wound up or dissolved, or any similar action in consequence of a debt or becomes insolvent or redresses any of its debts for reasons considered by Mitsubishi to be a material breach, whereupon Mitsubishi may terminate the respective Contract with immediate effect by giving written notice to the Customer. The Customer shall indemnify and hold Mitsubishi harmless against any and all claims, losses or damages arising from, or related to, such breach.

6.7 Unless Mitsubishi expressly elects otherwise, any Contract between it and the Customer for the supply of goods shall remain in force notwithstanding any exercise by Mitsubishi of its rights under Clause 6. The Customer shall be responsible for any costs and expenses incurred by Mitsubishi in exercising its rights under this Clause 6.

6.8 Nothing in this Clause 6 shall give the Customer any right to return the goods. Mitsubishi may sue the Customer for the price when due (without prejudice to its other rights or remedies hereunder) notwithstanding that the property in the goods may not have passed to the Customer.

6.9 The Customer acknowledges that Mitsubishi is the absolute owner of Mitsubishi’s “Intellectual Property Rights” (“being any patents, inventions, copyright and related rights, trade marks, trade names, rights to goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how), utility models and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply for), and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world) and the Customer will not (recognise, assign or encumber) any interest in or rights in relation to Mitsubishi’s Intellectual Property Rights. Mitsubishi shall not be liable for claims arising from an infringement of third party Intellectual Property Rights.

6.10 The Customer shall not use or exploit Mitsubishi’s Intellectual Property Rights, and in no circumstances shall the Customer reproduce, modify, adapt, merge, translate, disassemble, decompile, reverse engineer any of Mitsubishi’s Intellectual Property Rights or any software embedded in, or forming part of (directly or indirectly) Mitsubishi’s goods and/or ancillary services related to delivery of the goods, or create derivative works based on the whole of or any part of the software or incorporate the
software into any other software program not provided by Mitsubishi, and the Customer undertakes to only use any such software in the operation of the goods and/or ancillary services related to delivery of the goods.

8.3 Mitsubishi shall not be liable for the goods’ failure to comply with its specification pursuant to Clause 8.1 if
(a) the Customer makes any further use of such goods after giving Mitsubishi notice of any alleged defect not in conformance with Mitsubishi’s specification;
(b) the alleged defect arises because the Customer failed to follow its obligations under Clause 11, any Technical Information (defined below) or Mitsubishi’s other oral or written instructions as to the storage, installation, commissioning, use or maintenance of the goods or (if there are none) good trade practice;
(c) the alleged defect arises because Mitsubishi has integrated the goods with its other goods in such a way that三菱specification ensures the defect cannot be readily found or cured.
(d) the defect arises in connection with or as a result of Mitsubishi following any instruction, drawing or specification or agreement, or any production specification given by or on behalf of the Customer or a subcontractor of the Customer, or any other information supplied by the Customer prior to delivery of the goods;
(e) the Customer, or an affiliate, agent or subcontractor of the Customer, alters, modifies or repairs such goods without the written consent of Mitsubishi;
(f) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions.

8.4 All Contracts undertaken pursuant to these Terms and Conditions are solely in respect to the direct sale of goods and/or ancillary services between Mitsubishi and its Customer. Mitsubishi shall not be liable for losses or costs directly or indirectly resulting from or caused by any acts or omissions of the Customer or any other party, wholly or partially owned by the Customer or its ultimate parent company or one of its group companies or any other party whatsoever, with whom the Customer may elect to enter into a legally binding agreement (each a “Non-Customer”). In the event the Customer and/or its Non-Customer elect to use any third party for the procurement and integration of non-Mitsubishi parts into or in combination with the goods, or for the performance of any works, deliverables, services or advice including, but not limited to, design, engineering, including development and/or integration services, as well as the provision of any intangible software, information technology, operating system, development and/or program (bespoke or off the shelf) works, shipping, installation (either individually or combined with any other party (Third Party Works’), the Customer and/or Non-Customer shall be solely responsible for the scope, output and deliverables under any such Third Party Works contract; and the Customer shall always examine and satisfy itself and Mitsubishi in respect of any such Third Party Works including, but not limited to, obtaining a proportionate quantum of insurance to protect against any defective Third Party Works when performing its obligations under this Contract, and in any event Mitsubishi shall not be liable for the use of any such services or advice. Without limiting the foregoing, in all cases free to instruct any other third party to conduct its Third Party Works, and the Customer and Non-Customer shall be responsible respectively and liable and in all instances purchase the Third Party Goods from Mitsubishi on an “as is” basis. Conditional on the Customer immediately notifying Mitsubishi in writing that the respective Third Party Goods are defective, the Customer acknowledges and agrees that Mitsubishi’s
sole obligation and the Customer’s sole remedy shall be for Mitsubishi to use commercially reasonable endeavours to obtain the repair or replacement of the allegedly defective Third Party Goods, at Mitsubishi’s sole discretion, subject to the terms of Mitsubishi’s purchasing agreement with the supplier of the Third Party Goods. Mitsubishi does not warrant or represent that the specification; quality; accuracy; or performance output arising from any Third Party Goods is suitable for the Customer’s purposes, and Mitsubishi shall not be liable for any direct, indirect, special or consequential loss, damage, liability or expense incurred or suffered which is claimed to have resulted from the Customer’s use of, or reliance on, any Third Party Goods, including without limitation, any fault, error, act, omission, interruption, negligence or delay.

9. Returned Goods

9.1 The Customer shall be responsible for the cost of carriage and insurance in respect of all goods returned by the Customer to Mitsubishi for invoice or credit which goods shall be at risk of the Customer until actual receipt thereof by Mitsubishi.

9.2 Mitsubishi will not accept returned goods for credit or rectification unless such return has been authorised in writing by the appropriate Department of Mitsubishi or otherwise confirmed in accordance with that Department’s returns procedure and the goods are received by Mitsubishi in original condition and Mitsubishi reserves the right to determine at its sole discretion whether to accept the return of the goods or whether to rectify the goods or whether to issue a credit note in respect thereof.

10. Cancellation

Orders, once accepted, cannot be cancelled by the Customer without Mitsubishi’s written approval, in which case the Customer agrees to indemnify Mitsubishi for all loss suffered by it as a result of an approved cancellation. Mitsubishi may in any event terminate any Contract in part or full, or any other agreement or accepted order subject to these Terms and Conditions of Sale, at any time without incurring any liability; by giving the Customer no less than seven (7) days’ notice by post or email.

11. Technical Information and Trademarks

11.1 All technical information, specifications and drawings and any confidential information of any kind coming into the possession of the Customer in connection with any of Mitsubishi’s goods remain the property of Mitsubishi and shall not be used by the Customer other than for the performance of any contract between Mitsubishi and the Customer. All documents shall be returnable on request.

11.2 The Customer shall comply with, and shall ensure it notifies all affected Non-Customers of their obligation to comply with, all applicable installation, commissioning, electrical and operational standards and directives, as well as all laws and regulations, in regard to the safe and compliant use of any purchased good(s) in its respective jurisdiction. The Customer further undertakes to comply with (and to notify the same to any Non-Customer) all information of a technical nature that pertains to a respective good’s particulars and the compliant, safe and specified usage of any purchased goods including, but not limited to: all manuals, guidelines, directives, health and safety/usage instructions, operational details, publications, and any other directives, guidelines, or specifications issued by Mitsubishi (or otherwise available through Mitsubishi’s online hyperlinks, websites or applications) (together or separately “Technical Information”). The Customer acknowledges and agrees that all Technical Information is given in good faith, and no responsibility is accepted by Mitsubishi for their accuracy and their supply shall not be used to find liability on Mitsubishi’s part.

11.3 The Customer shall comply with all laws and regulations affecting the purchase and/or resale, packaging and labelling of the goods and shall not alter the packaging or labelling of the goods (including any Technical Information) unless authorised by Mitsubishi in writing.

11.4 The Customer shall not by any act in relation to the goods to which Section 6 of the Trade Marks Act 1938 (as amended) applies, namely the Customer shall not:

11.4.1 Apply any trade mark of which Mitsubishi is the proprietor or registered user (“Mitsubishi Trade Mark”) to the goods after they have suffered any alteration in their state or condition, get up or packaging;

11.4.2 Alter partly remove or partly obliterate any Mitsubishi Trade Mark;

11.4.3 Apply any other trade mark to the goods;

11.4.4 Add any other matter in writing that is likely to injure the reputation of any Mitsubishi Trade Mark.

12. Availability of Goods

Delivery is subject to the availability of the goods and if, owing to non-availability of such goods or any other cause beyond the control of Mitsubishi, Mitsubishi shall be unable to carry out its obligations hereunder it shall be entitled to determine this Contract forthwith by giving notice in writing to the Customer to that effect.

13. Severability

In the event that any of these Conditions or any part of any of them shall be held to be invalid or unenforceable, such invalidity or unenforceability of such condition or part thereof shall not affect the validity and enforceability of all remaining Conditions and parts of Conditions.

14. Proper Law and Jurisdiction

14.1 This Contract shall in all respects be governed by English Law.

14.2 The Customer submits to the non-exclusive jurisdiction of the English Courts, without prejudice to the right of Mitsubishi to bring any action before any other courts having jurisdiction.

15. Service of Notice

Any notice to be served under this Contract must be in writing and must be served by hand or by recorded delivery and in the case of a corporation shall be served at its registered office and in the case of Mitsubishi this shall be the address set out in