

## DUTCH AUCTION TERMS AND CONDITIONS

2 x PowerTec PowerCache® 250kVA Batteries  
As advertised at <https://www.newenergy.ventures/batteryauction>  
New Energy Ventures Holdings Pty Ltd t/a New Energy Ventures

These Terms and Conditions ("Terms") apply to the reverse auction of the 2 x PowerTec PowerCache® 250kVA Batteries ("Batteries"), which is being operated by New Energy Ventures Holdings Pty Ltd t/a New Energy Ventures ("NEV"), at <https://www.newenergy.ventures/batteryauction> ("Website").

Please read these Terms completely before submitting a bid for the Batteries ("Bid").

By submitting a Bid, you agree to be bound by these Terms. If you do not intend to be bound by these Terms, do not submit a Bid.

Do not submit a Bid unless you are ready and willing to pay your nominated Price for the Battery.

### 1. Providing your information

- a) In order to submit a Bid, you must provide your details including your full legal name, phone number, email address, and company details (if applicable).
- b) In the event that you provide inaccurate contact details, this will not release you from any of your obligations as a bidder, but NEV may choose not to accept your Bid.

### 2. Eligibility

- a) In order to submit a Bid, you must be at least 18 years old.
- b) In order to submit a Bid, you must have full legal capacity to enter legally binding contracts under the name that you provide when submitting your Bid.

### 3. NEV is agent for the Vendor

- a) In relation to the Auction, NEV is acting as agent for the vendor of the Batteries ("Vendor").

- b) NEV does not own the Batteries.
- c) These Terms constitute a binding legal agreement between you and NEV.
- d) If you make a successful Bid, then in addition to these Terms, you will be required to sign a binding Battery Purchase Agreement ("Purchase Agreement") between you and the Vendor.

#### 4. Auction structure

- a) The Batteries are being offered for sale using a structure which is commonly referred to as a "Reverse Auction" or "Dutch Auction".
- b) A person or entity that submits a Bid in this auction ("Auction") will be referred to as a "Bidder" throughout these Terms.
- c) This Auction has a fixed price period, followed by a falling price period, which continues until both Batteries are either sold or withdrawn by NEV.
- d) The Batteries are offered to Bidders on a first-come, first-served basis.
- e) The current price for which the Batteries may be sold ("Price"), is displayed on the Website.
- f) The Price per Battery is fixed at \$335,000 (three hundred and thirty five thousand dollars) for the initial 3 (three) weeks of the campaign (until 9am on 14 July 2020).
- g) Commencing at 9am on 14 July 2020, the Price will drop by \$0.173611/second until both Batteries receive Bids ("Price Drop").
- h) The Price Drop is only active during business hours (9am to 5pm, Monday to Friday, excluding public holidays). This means that the Price drops amount to \$5,000/business day (five thousand dollars per business day) until both Batteries receive Bids.
- i) Although the Price Drop is only active during business hours, Bids may be made at any time whilst the Auction is live.
- j) NEV reserves the right to withdraw the Batteries from the Auction at any time.

#### 5. Submitting a Bid

- a) A Bidder may submit a Bid by clicking the "Submit bid/offer" button on the Website, and entering their relevant information in the submission form, then clicking "Place bid".
- b) The Bidder must enter their full legal name and contact details in the spaces provided.
- c) The Bidder will have the option to "Bid at current price" or "Bid at future price".



- d) If the Bidder submits a Bid using the "Bid at current price" option, then they make an irrevocable offer to purchase one Battery at the Price calculated to the nearest minute of the time they submit their Bid. (Bid submission forms are timestamped with a date and time in hours and minutes). Provided that at least 1 (one) Battery is still available, and NEV is content with the information that the Bidder has provided, they will win the Auction, and a Battery will be reserved for them.
- e) If the Bidder submits a Bid using the "Bid at future price" option, then they make an irrevocable offer to purchase one Battery at the Price that they nominate in the space provided in the submission form. If and when the Price (as posted on the Website) has dropped such that it is less than or equal to the Price which the Bidder has nominated in their Bid, and provided that at least 1 (one) Battery is still available, and NEV is content with the information that the Bidder has provided, they will win the Auction, and a Battery will be reserved for them.
- f) If the Bidder submits a Bid using the "Bid at future price" option, then they accept that their Bid may only be considered once the Price (as posted on the Website) has dropped such that it is less than or equal to the Price which the Bidder has nominated in their Bid. The Bidder further accepts that both Batteries may be sold before this occurs, meaning that their Bid will not be considered and they will be unable to purchase a Battery.
- g) As there are two batteries available, the two first successful Bids will win the Auction.
- h) If a Bidder wishes to purchase both Batteries, then they should submit 2 (two) Bids.
- i) The Price of the lowest successful Bid will be offered to both Bidders.
- j) If two successful bids are not received, or the reserve price is met then the Auction may be passed in.
- k) If only one successful Bid is received, NEV may negotiate the Price with the Bidder of that Bid.
- l) The Price offered to one or both Bidders set by the process outlined in these Terms is the "Final Price".
- m) If a Bidder submits a successful Bid, they will be obliged to purchase a Battery at the Final Price, as well as to pay any additional costs as described in these Terms.

## 6. Batteries may be sold elsewhere

- a) NEV and the Vendor are free to offer the Batteries for sale via whatever other channels they choose.
- b) NEV will take all reasonable steps to keep the Website up to date regarding the availability of the Batteries, however it is possible that the Batteries may no longer be available, notwithstanding that they appear as available on the Website.



- c) Notwithstanding that a Bidder submits a successful Bid, NEV and the Vendor are under no obligation to provide a Battery to the Bidder unless and until the Bidder executes a valid Purchase Agreement on reasonable commercial terms, with the Vendor.

## 7. Inclusions and exclusions

- a) Upon signing a valid Purchase Agreement, and in consideration for payment of the full Final Price, together with any additional costs, taxes or fees, the Bidder will be entitled to receive:
  - a. One (1) PowerTec PowerCache® 250kVA Battery, Inverter, BMS, Switchgear, Coupling Transformer, Monitoring equipment and enclosures.
- b) Included within the full Final Price are the following two outstanding payment installments for the battery purchase ("Payment Installments") to be paid to PowerTec:
  - a. \$28,500 (twenty-eight thousand, five hundred dollars) excluding GST, due when the system is ready for delivery
  - b. \$19,000 (nineteen thousand dollars) excluding GST, due on final acceptance of the system
- c) In addition to the full Final Price, the Bidder will be responsible for the following:
  - a. additional costs ("Additional Costs") including but not limited to:
    - i. Freight
    - ii. Install & commissioning
    - iii. FCAS enablement, metering, testing & commissioning
    - iv. Network connection and operations management.
    - v. Any other applicable taxes, charges, costs or fees.
  - b. Goods and Services Tax (GST) in the amount of 10% of the Final Price.
- d) Any estimates for Additional Costs, as provided in the preceding subclause hereof are estimates, not quotes. Actual costs may vary.

## 8. Bidder's obligations

- a) If a Bidder submits a successful Bid, they are obliged to:
  - a. Pay to the Vendor a deposit of 10% of their Final Price plus GST within 5 business days of the end of the Auction.
  - b. Execute a valid Purchase Agreement on reasonable commercial terms, with the Vendor, within 5 business days of receiving the said Purchase Agreement.
  - c. Pay to the Vendor the balance Final Price less the Payment Installments plus GST within 30 days of the end of the Auction.
  - d. Pay the outstanding Payment Installments and Additional Costs.
  - e. Organise to take physical possession of the Battery from the within 30 days of the end of the Auction. (The battery is ready of delivery in November)



## 9. Failure to pay

- a) In the event that a Bidder submits a successful Bid but fails to provide payment and/or take possession of the Battery in accordance with the preceding clause hereof, the Bidder will be liable for NEV's reasonable costs, at NEV's sole discretion, in connection with:
  - a. Enforcing specific performance of these Terms in order to enforce payment and collection of the Battery; and
  - b. NEV making good the vendor of the Battery; and
  - c. The storage and resale of the Battery, including but not limited to any administration costs, storage costs, opportunity cost, advertising, insurance or transportation as well as any other reasonable costs or expenses.
- b) In the event that a Bidder submits a successful Bid but fails to provide payment in accordance with the preceding clause hereof, or otherwise fails to comply with these Terms, NEV may, in its absolute discretion:
  - a. Terminate these Terms and refuse to sell the Battery to the said Bidder.
  - b. Take legal action to recover all money owed by the Bidder under these Terms.
  - c. Resell the Battery in any manner and on such conditions as NEV chooses without notice of resale to the Bidder.
  - d. In the event that NEV manages to resell the Battery, but the new sale price is less than the Final Price, claim the net shortfall (between the Final Price and the resale price received after deducting all expenses (if any) from the Bidder.
  - e. Charge the Bidder a dishonour fee in the amount of 3% of the Final Price in order to cover any costs of resale of the Battery, administration costs, storage costs, opportunity cost, advertising, insurance or transportation as well as any other reasonable costs or expenses, in order to reinstate NEV to the position it would have been in, had the Bidder purchased the Battery.
  - f. Retain any monies which the Bidder has paid towards the Battery (such as a deposit).

## 10. Title and risk

- a) NEV is acting as agent for the Vendor and therefore NEV does not hold title or risk in the battery at any stage.



- b) Title and risk in the Battery will pass from the Vendor to the successful Bidder when full payment of the Final Price together with any Additional Costs has been paid by the Bidder.
- c) Any loss or damage to the Battery which occurs after this time (for example, damage which occurs during transportation), will be at the Bidder's risk.
- d) The Bidder should strongly consider obtaining insurance to cover the Battery during any storage and transportation once title and risk has passed to the Bidder.

## 11. Location of Batteries

The Batteries are located in Mitcham, Victoria ("Current Location").

- a) It is the Bidder's sole responsibility to organise and pay for the collection and transportation of the Battery from the Current Location to the Bidder's final location.
- b) NEV will take any reasonable steps to cooperate with the Bidder in order to facilitate the collection of the Battery, but any costs associated with such action will be borne by the Bidder.

## 12. Storage of the Batteries

The Vendor may facilitate storage of the Battery until such time as Bidder is able to have it collected and transported. The Bidder should make any such storage arrangements directly with the Vendor.

## 13. Specifications of Batteries

- a) It is the Bidder's sole responsibility to determine whether the Battery specifications meet their requirements before they submit a Bid.
- b) It is the Bidder's sole responsibility to review the "Product Info Pack" as published on the Website and to organise any physical inspection(s) of the Batteries as the Bidder requires, in order to determine if the Batteries are fit for the Bidder's purposes.

## 13. Warranty and Indemnity

- a) As NEV is acting as agent for the Vendor, NEV makes no warranties or representations about the condition or the fitness for purpose of the Batteries.



- b) The Batteries are presented by NEV on an "as-is" basis without warranty.
- c) In the event that a Battery is not of acceptable quality or does not meet its description, the Bidder may have certain rights against the Vendor under the Australian Consumer Law, in connection with the Purchase Agreement.
- d) NEV is not liable for any damages resulting from the Auction, or from the Bidder's visit to the Website. NEV does not guarantee secure, continuous or uninterrupted access to this Website.
- e) Under no circumstances can NEV, or any of NEV's affiliates or related entities be liable for any loss whatsoever which arises from the Bidder's use of the Website.
- f) NEV is not responsible for any loss, liability or damage incurred by a Bidder in connection with Bids not received, processed or accepted due to technical difficulties.
- g) The Bidder accepts sole responsibility for the Bidder's usage of the Website.
- h) To the maximum extent permitted by law, the Bidder holds harmless, indemnifies and keeps indemnified NEV together with any parent companies, subsidiary companies, affiliates, officers, directors, agents, or employees, from and against any claims, demands, proceedings, losses and damages (whether actual, special or consequential and whether direct or indirect) of every kind and nature, known and unknown, and whether arising through recklessness, negligence or otherwise, including reasonable solicitors' fees, made by any party due to or arising out of the Bidder's breach of these Terms, or any other matter in relation to the Auction.
- i) Subject to any rights the Bidder may have under the Australian Consumer Law or any similar Australian laws NEV does not make any representation that:
  - a. the Batteries are fit for a particular purpose.
  - b. the Batteries are able to be repaired, replaced or serviced over and above the rights which the Bidder may have under any vendor's warranties.

#### 14. Governing law for disputes

These Terms are governed by and will be interpreted in accordance with the laws of Tasmania. The Bidder and NEV submit to the jurisdiction of the courts of Tasmania.

#### 15. Changes to these Terms

NEV reserves the right to update or amend these Terms from time to time. The Terms that apply to you will be the Terms as published on the Website at the time that you submit your Bid. Therefore, you should review these Terms at the time of submitting your Bid.

#### 16. Term and termination



- a) If the Bidder fails to meet its obligations under these Terms, NEV may terminate these Terms without notice.
- b) These Terms shall remain in full force and effect until the Bidder has met all of its obligations, as set out in these Terms, or until otherwise terminated by NEV.
- c) Upon termination, expiration or completion of these Terms, any provisions which would by their nature be expected to survive termination, expiration or completion shall remain in full force and effect, and any accrued rights or liabilities shall survive.

## 17. Interpretation

In these Terms, unless the context otherwise requires, the following rules of interpretation shall apply:

- a) Words referring to one gender include every other gender.
- b) Words referring to a singular number include the plural, and words referring to a plural include the singular.
- c) Words referring to a person or persons includes companies, firms, corporations, organisations and vice versa.
- d) Headings and titles are included in these Terms for convenience only and shall not affect the interpretation of these Terms.
- e) Each party must, at its own expense, take all reasonable steps and do all that is reasonably necessary to give full effect to these Terms and the events contemplated by them.
- f) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- g) All references in this Agreement to sums of money are references to Australian dollars.

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