

## **Standard Terms and Conditions for the supply of goods and services.**

### **1. Interpretation**

In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document [as amended from time to time in accordance with clause 14].

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of Goods and/or Services in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Force Majeure Event:** has the meaning given in clause 9.

**Goods:** the goods (or any part of them) set out in the Contract.

**Period for Completion of the Goods and Services:** as detailed within the Contract or if no such period is given completion will be within a reasonable period of time.

**Services:** the services (or any part of them) set out in the Contract.

**Quotation:** the quotation provided by the Supplier describing the Goods and/or Services to be provided by the Supplier and any other relevant information concerning the supply of the Goods and/or Services.

**Specification:** any specification for the Goods and/or Services, including any related plans and drawings, that is agreed [in writing] by the Customer and the Supplier.

**Supplier:** Power Electrics Generators Ltd., St Ivel Way, Warmley, Bristol, BS30 8TY (registered in England and Wales with company number 7188008).

**Warranty:** Power Electrics Generators Ltd, Warranty Terms and Conditions (latest issue). [Power Electrics Generators Ltd Warranty Terms and Conditions](#)

### **1. Basis of contract**

1.1 These Conditions apply to the Contract which governs the sale of all Goods and Services to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Contract constitutes the entire agreement between the parties. All Goods and Services are sold in accordance with the Conditions set out herein, even if they may have been supplied against a Customer's order containing other conditions. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

1.2 Any other samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract or have any contractual force.

1.3 A quotation for the Goods and Services given by the Supplier shall not constitute an offer. If no period is stated within the quotation, it shall only be valid for a period of 14 Business Days from its date of issue.

1.4 The Goods and Services are described in the Quotation. To the extent that the Goods and Services are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 1.4 shall survive termination of the Contract. The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

### **2. Delivery**

2.1 Unless it is stated within the Contract that the Customer shall collect the Goods and/or Services, the Supplier shall deliver the Goods and/or Services to the location set out in the Contract (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods and/or Services are ready. Delivery of the Goods and/or Services shall be completed on the Goods and/or Services arrival at the Delivery Location. The Supplier will endeavour to deliver the Goods and/or Services within the Period for Completion but dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay or failure in delivery of the Goods and/or Services that is caused by a Force Majeure Event, any cause beyond the Supplier's control, a Customer breach of the Contract including non-payment of any sums due for payment, the Customer's failure to provide the Supplier with adequate delivery and unloading instructions or any other instructions, access, preparations or information that is relevant to the supply of the Goods and Services.

2.2 If the Supplier fails to deliver the Goods and/or Services, its liability shall be limited to the costs and expenses reasonably incurred by the Customer in obtaining replacement goods and/or services of similar description and quality in the cheapest market available, less the price of the Goods and/or Services.

2.3 If the Customer fails to accept delivery of the Goods and/or Services within 3 Business Days of the Supplier notifying the Customer that the Goods and/or Services are ready, then delivery of the Goods and/or Services shall be deemed to have been completed at 9.00 am on the fourth Business Day after the day on which the Supplier notified the Customer that the Goods and/or Services were ready and the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance). The Supplier may also charge the Customer for any costs resulting from any delay and/or cancellation of the Services.

2.4 If 7 Business Days after the day on which the Supplier notified the Customer that the Goods and/or Services were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods. The Supplier may also charge the Customer all costs resulting from any delay and/or cancellation of the provision of the Services.

2.5 The Supplier may deliver the Goods and/or Services by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

### **3. Quality**

3.1 If the Customer gives notice in writing to the Supplier within 3 days after delivery of the Goods and/or Services that some or all of the Goods and/or Services are defective and the Supplier is given a reasonable opportunity of examining such Goods and/or Services the Supplier shall, at its option, repair or replace the defective Goods and/or Services, or refund the price paid by the Customer for the defective Goods and/or Services (or defective part of the Goods and/or Services) in full. Goods and/or Services represented by the Customer as being defective shall not form the subject of any claim for work done by the Customer, or for any loss, damage or expense howsoever arising directly or indirectly from such defects.

3.2 The Supplier shall not be liable for any defect in the Goods and/or Services in any of the following events:

- i) the Customer makes any further use of such Goods and/or Services after giving notice in accordance with clause 3.1;
- ii) the Customer fails to record on the advice or delivery note any shortage or Goods damaged in transit or Goods received in an unsatisfactory condition. The packing and contents should be retained for inspection.
- iii) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods and/or Services or (if there are none) good trade practice regarding the same;
- iv) the defect arises as a result of the Supplier following any drawing, design, instruction or Specification supplied by the Customer;
- v) the Customer alters or repairs such Goods and/or Services without the written consent of the Supplier;
- vi) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- vii) the Goods and/or Services differ from their description OR the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

3.3 No condition of warranty is given or implied as to the life or wearing quality of the Goods and/or Services supplied or that the Goods and/or Services are suitable for any particular purpose or for any use under specific conditions notwithstanding that such purpose or conditions may be known or made known to the Supplier.

3.4 Any Warranty provided shall be in accordance with Power Electrics Generators Ltd Warranty Terms and Conditions (latest issue).

3.5 Except as provided in this clause 3, the Supplier shall have no liability to the Customer in respect any defect. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract. These Conditions shall apply to any repaired or replacement Goods and/or Services supplied by the Supplier.

#### **4. Title and risk**

4.1 The risk in the Goods and Services shall pass to the Customer on completion of delivery. Title to the Goods and Services shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for the Goods and any other goods or Services that the Supplier has supplied to the Customer in respect of which payment (including any interest or other such sums) has become due.

4.2 Until title to the Goods and Services has passed to the Customer, the Customer shall:

- i) hold the Goods on a fiduciary basis as the Supplier's bailee;
- ii) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- iv) notify the Supplier immediately if it becomes subject to any of the events listed in clause 6 and give the Supplier such information relating to the Goods as the Supplier may require from time to time,

4.3 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 6, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

#### **5. Price and payment**

5.1 The price of the Goods and Services shall be the price set out in the Contract, or if no price is stated in the Contract, the price set out in the Supplier's Quotation. The Supplier may, by giving notice to the Customer at any time up to 1 Business Day before delivery, increase the price of the Goods and/or Services to reflect any increase in the cost of the Goods and/or Services that is due to:

- i) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and manufacturing costs);
- ii) any request by the Customer to change the delivery date(s), quantities or types of Goods and Services ordered, or the Specification; or
- iii) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

5.2 If it is stated within the Contract that the price of the Goods and Services is exclusive of the costs and charges of packaging, insurance and transport of the Goods, these costs and charges shall be invoiced to the Customer.

5.3 The price of the Goods and Services is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and Services.

5.4 The Supplier may invoice the Customer for the Goods and Services on or at any time after the completion of delivery. The Customer shall pay the invoice in full and in cleared funds within 7 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 20% per annum above HSBC Banks base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

5.5 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

#### **6. Termination**

6.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (i) the Customer commits a material breach of its obligations under this Contract or a Force Majeure event occurs;
- (ii) the Customer is involved in any court procedure instigated in respect of any solvency issues the Customer may have;
- (iii) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or

(iv) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

6.2 Without limiting its other rights or remedies, the Supplier may also terminate the Contract:

(i) by giving the Customer 1 months' written notice;

(ii) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

6.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Goods and Services under the Contract or any other contract between the Customer and the Supplier if:

(i) the Customer fails to make pay any amount due under this Contract on the due date for payment; or

(ii) the Customer becomes subject to any of the events listed in clause 6 or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 7. Consequences of Termination

7.1 On termination of the Contract for any reason:

(i) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(ii) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them.

Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose;

(iii) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(iv) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 8. Limitation of Liability

8.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract, or any damage, injury or loss to any life, limb or property howsoever caused arising out of use or handling of the Goods and Services; and

8.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 10 % of the value of the Contract.

8.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

## 9. Force majeure

The Supplier shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, inability to obtain materials or labour for any reason, suppliers or subcontractors.

## 10. Assignment and subcontracting

10.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

## 11. Severance

11.1 If any court or competent authority finds that any provision of these Conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of these Conditions shall not be affected.

11.2 If any invalid, unenforceable or illegal provision of these Conditions would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **12. Waiver**

12.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **13. Third party rights**

13.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.

## **14. Variation**

14.1 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

## **15. Governing law and jurisdiction.**

15.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.