

# Terms and Conditions of Sale

## 1.0 DEFINITIONS

- 1.1 "Seller" shall mean the South Africa incorporated company trading as FGW Generators (Pty) Limited. Registered Head Office:  
FGW Generators (Pty) Limited, 5 Falcon Crescent, Airport City, Cape Town, 7490, South Africa so named in the quotation or tender.
- 1.2 "Buyer" shall mean the person, firm or company to whom the quotation or tender is issued.
- 1.3 "Goods" include all goods and/or services covered by the quotation or tender.
- 1.4 "Quotation" or "Tender" shall mean Seller's verbal or written quotation or tender to which the terms and conditions apply.
- 1.5 "Contract" means the contract in which these terms and conditions are incorporated.
- 1.6 "Party" shall mean the Seller and the Buyer.

## 2.0 FORMATION OF CONTRACT

- 2.1 Acceptance. All orders are accepted subject to the terms of sale herein. Buyer's verbal or written order in acceptance of the quotation or tender is deemed to be an offer which constitutes a binding contract only upon Seller's acceptance of such order. Deviating terms of Buyer are expressly rejected.
- 2.2 Descriptive Matter. All descriptive matter, weights and measures in Seller's catalogues, price lists and other advertising media do not form part of any contract.
- 2.3 Change of Design. Seller's goods and specifications are subject to improvements and changes without notice.
- 2.4 Validity. If one or more of the provisions of these terms prove to be invalid, all other provisions remain valid.
- 2.5 Seller's employees or agents are not authorised to make any representations concerning the goods unless confirmed by Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.6 Any typographical, clerical or other error or omission in any quotation, tender, acknowledgement of order or invoice or other document issued by Seller shall be subject to correction without any liability on the part of Seller.
- 2.7 Seller may withdraw any tender or quotation at any time before being incorporated into a Contract.

## 3.0 DATE OF CONTRACT

- 3.1 The Contract for the sale of goods shall be made when Seller's Acknowledgement of Order is despatched to Buyer and the date thereof shall be the said Contract date.

## 4.0 ERROR AND CANCELLATION

- 4.1 Buyer shall be responsible to Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by Buyer, and for giving Seller any necessary information relating to the Goods within a sufficient time to enable Seller to perform the Contract in accordance with its terms.
- 4.2 Any errors in Seller's acknowledgement of order must be in writing from Buyer to Seller within 7 days of receipt of the acknowledgement of order. Buyer shall be responsible for all loss or damage arising out of failure to give such notification.
- 4.3 No order which has been accepted by Seller can be cancelled by Buyer except with the agreement in writing of Seller and on terms that Buyer shall indemnify Seller in full against all loss (including loss of profit), costs including the cost of all labour and materials used, damages, charges and expenses incurred by Seller as a result of cancellation.

## 5.0 PRICES AND PAYMENTS

- 5.1 Ex-Works. Unless expressly stated otherwise, prices shall be ex-works, exclusive of VAT and exclude delivery costs.
- 5.2 Price Changes. The price of the Goods shall be Seller's quoted price. All prices quoted for are valid for 30 days only or until earlier acceptance by Buyer, after which they may be altered by Seller without giving notice to Buyer.
- 5.3 Seller reserves the right, by giving notice to Buyer at any time before delivery, to increase the price of the Goods to effect an increase in the cost to Buyer which is due to any factor beyond the control of Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is required by Buyer, or any delay caused by an instruction of Buyer or failure of Buyer to give Seller adequate information or instructions.
- 5.4 Buyer shall pay to Seller, on demand, a late payment charge equal to the lesser of Seller's then-current standard late payment charge (SOUTH AFRICAN RESERVE BANK BASE RATE + 3%/annum plus expenses) or the highest charge allowed by law on any amount unpaid on the due date.

## 6.0 DELIVERY

- 6.1 Shipment and Delivery. In these terms where the context allows, "Delivery" shall mean availability for delivery of the goods to Buyer, or their availability for despatch ex-Seller's warehouse, on Buyer's instructions to a carrier for shipment to Buyer, whichever is the earlier.
- 6.2 Delivery Time. Stated delivery times shall not be binding unless so stated. As far as delivery time is binding it shall be calculated from the date of the acknowledgement of order or if payment by a valid bill of exchange has been agreed upon, from the date on which the bill is returned from Buyer to Seller. This is subject to the provision that the delivery time shall not commence prior to Seller receiving all necessary technical data nor does it commence before the parties have reached full agreement on all features of the equipment and attachments to be built.
- 6.3 If the Buyer for whatever reason fails to take delivery of all or any of the Goods, then without prejudice to any right or remedy available to the Seller, the Seller may:
- 6.3.1 Store the Goods at the Buyer's cost and risk until actual delivery or 30 days (whichever shorter) and charge the Buyer

reasonable storage costs (including transport, handling and insurance); and/or at its sole discretion

- 6.3.2 Sell the Goods at a reasonably obtainable price and (after deducting all reasonable costs incurred including storage, stocking charges, insurance and selling expenses) account to the Buyer for any excess, over the price already paid by the Buyer, under the Contract or charge the Buyer for any shortfall below the price payable by the Buyer under the Contract.

## 7.0 TITLE AND RISK

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 In the case of Goods to be collected from Seller's premises, at the time when Seller notifies that the Goods are available for collection; or
- 7.1.2 In the case of Goods to be delivered otherwise than from Seller's premises, at the time of delivery or, if Buyer wrongfully fails to take delivery of the Goods, the time when Seller has tendered delivery of the goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any provision of these Conditions, the title of the Goods shall not pass to Buyer until the Seller has received payment (i.e. cleared funds) in full of the price of the Goods and all other goods agreed to be sold by Seller to Buyer for which payment is then due.
- 7.3 Until such time as the title of the Goods passes to Buyer, Buyer shall hold the goods as Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of Buyer and third parties and properly stored, protected and insured and identified as Seller's property. Until that time Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds separate from any monies or property of Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4 Until such time as the title of the Goods passes to Buyer (and provided the Goods are still in existence and have not been resold), Seller shall be entitled at any time to require Buyer to deliver up the Goods to Seller and, if Buyer fails to do so forthwith, to enter upon any premises of Buyer or any third party where the Goods are stored and repossess the Goods.

## 8.0 COMPLAINT AND NOTICE OF DEFECTS

- 8.1 Notification to Seller. Claims regarding incomplete delivery or notices of defects must be submitted to Seller in writing not later than 7 days after delivery of the Goods and must be sufficiently evidenced. If such complaints are not submitted on time the Goods delivered are deemed to be approved. If they are submitted in time Seller agrees to meet the obligations stipulated as set out in Clause 10.

## 9.0 TESTING AND INSTALLATION

- 9.1 Where the Buyer requires the Seller to carry out any tests on the Goods the Seller may charge the Buyer at a reasonable rate for work done and materials used in testing, unless the aforementioned is already included within the Contract.
- 9.2 Where we carry out work at the Seller's request at any place other than our own premises, the Buyer shall indemnify the Seller against any losses we may suffer (including any damages, costs and expenses we may have to pay) as a result of damage to our property or claims against us by our employees or by any third party where the losses arise from the nature, condition or state of repair of the place or any materials or equipment in that place or from any negligence of the customer, his servants or agents or any third party.

## 10 WARRANTY AND LIABILITY

- 10.1 Seller warrants that the Goods shall be free from defects in material and workmanship, subject to conditions below and the then current Seller End-User Warranty (which terms are deemed to be incorporated herein). Seller's obligation under this warranty shall be, if Seller's examination proves any part which under normal use and proper maintenance is defective in material and/or workmanship within one year from initial start-up or eighteen months from sale or despatch from the Seller, then Seller will repair, replace or allow credit for such part.
- 10.2 Notification to Seller must be provided, in writing within the warranty period, of any defects and satisfactory proof thereof given to Seller promptly after discovery of the defect and thereafter such part returned to Seller at his request.
- 10.3 This warranty does not apply to used products or to damage to any products or parts caused by overloading or other misuse, reject or accident, nor does this warranty apply to any product or part which shall have been repaired, altered or assembled in any way by others than Seller which, in the sole judgement of Seller, affect the performance, stability or purpose for which it was manufactured.
- 10.4 Remedies under such warranty are limited to the provision of material and services only. Seller will be under no liability to the Buyer for any further loss or damage of any kind howsoever caused whether consequential, financial, loss of profit or opportunity or otherwise. All conditions, warranties and stipulations, express or implied, statutory, customary or otherwise, which but for such exclusion would or might subsist in the Buyer's favour are hereby expressly excluded - in particular, when product is operating in conjunction with a transmission system where there is risk of potentially damaging electrical stresses in the event of transmission failure.
- 10.5 The Seller's maximum liability howsoever arising out of or in relation to this Contract shall be limited to the invoiced value of the Goods concerned.
- 10.6 The Seller's warranty shall not, unless expressly agreed in writing by the Seller, extend to defects arising from any drawing, design or specification supplied by the Buyer or its customer.

## 11.0 FORCE MAJEURE

- 11.1 The Seller reserves the right to defer the date of delivery or to cancel the Contract or to reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if Seller is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the

Seller including, without limitation, acts of God, governmental actions, war, national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labourer 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 ninety days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

## 12.0 INSOLVENCY OF BUYER

- 12.1 The Seller shall be entitled to cancel the Contract in whole or in part or to suspend any further deliveries of Goods or performance of services under such Contract without any liability to the Buyer forthwith by written notice if: the Buyer makes any voluntary arrangement with its creditors or becomes bankrupt or goes into liquidation, or a receiver is appointed over any of the property or assets of the Buyer; or the Buyer ceases or threatens to cease to carry on business or is unable in the Seller's reasonable opinion to meet its debts as they fall due; or the Seller has reasonable grounds for believing that any of these events is about to occur in relation to the Buyer. These rights are in addition to any other rights of the Seller in such circumstances.
- 12.2 If any Goods have been delivered or services performed but not paid for, then the price shall become immediately due and payable notwithstanding any previous arrangement to the contrary.

## 13.0 TERMINATION AND SUSPENSION OF CONTRACT

- 13.1 The Seller shall be entitled by notice in writing to the Buyer to treat the Contract as repudiated or to terminate the Contract if the Buyer fails to remedy any breach of the Contract within 7 days of notice of such breach.
- 13.2 Without prejudice to Clause 13.1 and Clause 5.4 the Seller shall be entitled to immediately suspend the Seller's performance of the Contract upon any breach of the Contract by the Buyer until such breach is remedied to the Seller's satisfaction

## 14.0 BRIBERY

- 14.1 The Buyer itself undertakes and will cause its employees, contractors, advisors and agents to comply with at each time applicable Anti-Corruption legislation and ordinances and the Buyer will maintain adequate procedures to prevent any conduct which could contravene such regulations.

## 15.0 GENERAL

- 15.1 Any notice to be given or required or permitted to be given by either Party to the other under the Contract or these Terms and Conditions shall be in writing and shall be deemed to have been duly given if sent or delivered to the Party concerned at its registered office or such other address as that Party may from time to time notify in writing.
- 15.2 If any provisions of the Contract or these Terms and Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of the Contract or these Terms and Conditions as applicable.
- 15.3 The Buyer may not assign, subcontract, delegate or sub-license the Contract or any of their rights or obligations under the Contract without the Seller's prior consent in writing. The Seller may assign, sub-contract, delegate or sub-license part or the whole of the Contract.
- 15.4 The Seller values and protects their brand, image and intellectual property. Nothing in these Terms and Conditions or any supply to the Buyer grants any ownership or rights over such assets beyond the legal minimum rights essential to the use of any Goods.
- 15.5 The Seller's rights shall not be prejudiced or restricted by any indulgence or forbearance extended by the Seller to the Buyer and no waiver by the Seller in respect of any breach of the Contract or these Terms and Conditions shall operate as a waiver in respect of any subsequent breach of the same or any other provision.
- 15.6 Irrespective of where the Goods are delivered the validity, construction and performance of this Contract and these Terms and Conditions shall be governed by South African law. You agree to submit to the non-exclusive jurisdiction of the South African courts.
- 15.7 A person who is not a party to the Contract has no rights under the Contract to enforce any term of the Contract or these Terms and Conditions.
- 15.8 Each right or remedy that the Seller has under this Contract is without prejudice to any other right or remedy that the Seller may have, whether under the Contract or not.
- 15.9 Headings to clauses in these Terms and Conditions are included for ease of reference only and shall have no effect on the construction or interpretation of these Terms and Conditions. Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.