



COMPONENTS 2005

— [PTY] LTD —

t/a ENGINE & HEAVY DUTY COMPONENTS



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**CONDITIONS OF SALE
GENERATOR SETS, ENGINES AND EQUIPMENT & WARRANTY**

A. These conditions govern the terms on which the goods are purchased by the Purchaser and supplied by the Seller. No branch or appointed dealer or seller representative has the authority to commit the Seller to any variation of these conditions of sale.

1. INTERPRETATION

In this agreement the following words shall have the meanings set forth in this clause 1-

- 1.1 "Consumer Protection Act" - the Consumer Protection Act 68 of 2008, as amended, together with the regulations promulgated in respect thereof;
- 1.2 "delivery agent" – shall mean any courier or other entity, excluding the Seller, which undertakes delivery of the goods to the Purchaser;
- 1.3 "entity" – shall mean any natural person, association, business, close corporation, company, concern, enterprise, firm, joint venture, partnership, trust, organ of state and/or undertaking whether or not having legal personality;
- 1.4 "goods" - the relevant generator set, engine and/or equipment sold by the Seller to the Purchaser in terms of the invoice;
- 1.5 "invoice" – shall mean the written invoice furnished by the Seller to the Purchaser in respect of the goods;
- 1.6 "protected consumer" - means a consumer as defined in section 1 of the Consumer Protection Act and whose annual turnover or assets value falls below the threshold as contemplated in section 6 of the Consumer Protection Act and to whom the Act applies;
- 1.7 "Purchaser" – shall mean the entity reflected as such on the invoice;
- 1.8 "Seller" – shall mean EHD Components (Pty) Ltd and/or any of its subsidiaries and/or any of its appointed dealers or representatives.

2. ACCEPTANCE OF ORDERS

- 2.1 All orders for generator sets, engines or equipment quoted on or listed in any catalogue or pricelist of the Seller, are subject to stock availability and/or prior sales occurring between the date of quote and the date of order.
- 2.2 All prices quoted are subject to variation depending on factors that may affect prices between the date quoted and date of acceptance of the quote or date delivery or collection (whichever is the earlier), including but not limited to variations in rates of ocean freight; rail freight; insurance; customs duties and import taxes; and rates of exchange.
- 2.3 The Purchaser acknowledges that it has signed and accepted the Pre-Delivery Test Sheet or Check List for the relevant generator set, engine or equipment and by such signature confirms that the relevant generator set, engine or equipment has been inspected and tested or checked by a suitably qualified technician for the installation and/or use intended by the Purchaser, the Purchaser is satisfied that these conform in all respects to the quantity and description of goods ordered as reflected in the invoice, and that all relevant instruction or operation manuals and a copy of these Conditions of Sale and Warranty have been provided to the Purchaser.
- 2.4 After acceptance of an order, the Purchaser shall not be entitled to cancel the order and shall be obliged to accept delivery and pay for the goods when tendered by the Purchaser.

3. DELIVERY

- 3.1 Delivery is deemed to have taken place when the Purchaser personally or through its appointed delivery agent takes possession of the goods at the Seller's premises. The Seller will notify the Purchaser when the goods are ready for collection. If the Purchaser fails to take delivery within 3 business days from the date on which the Seller notifies it that the goods are ready for collection, the

risk of loss or damage to the goods shall immediately pass to the Purchaser who shall refund to the Seller on demand the reasonable costs (including storage, transport and insurance) of moving the goods and storing them during the period of the delay.

- 3.2 The Purchaser shall be responsible for the removal and transportation of the goods from the Seller's premises and the offloading of the goods at the Purchaser's premises and shall bear all costs associated therewith.
- 3.3 All delivery agents are deemed to be acting as agents of the Purchaser and risk of loss or damage passes to the Purchaser once the goods are in the possession or control of such delivery agents.
- 3.4 Agreed dates of delivery are approximate dates only. Whilst the Seller shall use its reasonable endeavours to effect delivery on the agreed date, the Seller reserves the right to defer the date of delivery or to cancel the contract or reduce the volume of goods ordered by the Purchaser (without liability to the Purchaser) if the Seller is prevented from or delayed in performing under this agreement due to circumstances outside the reasonable control of the Seller, including but not limited to acts of God, government actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, drought, lockouts, strikes or other labour disputes or delays affecting carriers or inability or delay in obtaining supplies of products. In the event of such a delay or failure to effect delivery the Seller shall not be liable to the Purchaser for any loss, damage or expense arising from such delay or failure.

4. **OWNERSHIP & RISK**

- 4.1 All goods shall be at the Purchaser's sole risk as soon as the Purchaser or the delivery agent has taken delivery of the goods at the Seller's premises.
- 4.2 The Seller shall not be responsible for any damage whatsoever caused to any goods as a result of inadequate and/or improper loading or offloading, transportation, installation, tampering with the goods or negligence by the Purchaser or any delivery agent (or any person acting on their behalf or instruction).
- 4.3 Any goods returned to the Seller for any reason shall be at the sole risk of the Purchaser at all times and the Seller shall be at liberty to store the same otherwise than on its premises or deliver the same to such subcontractors as may need to carry out any part of work required in respect of the goods.
- 4.4 Notwithstanding anything to the contrary contained herein, ownership in all goods sold to the Purchaser by the Seller, as contemplated herein, shall remain solely and exclusively vested in the Seller until payment for such goods has been made in full.
- 4.5 If the Purchaser fails to make full payment of all amounts due to the Seller in terms hereof by the due date for such payments, the Seller shall be entitled, without prejudice to any rights which it may have in law, to enter the premises of the Purchaser or to trace the goods to such premises at which they may be located and to take possession of the goods

5. **PERFORMANCE**

- 5.1 All performance figures stated in relation to the goods are approximate only and the Seller shall have no liability whatsoever in respect of a failure to obtain such figures.
- 5.2 It is specifically recorded that all generator sets, engines or equipment output ratings, per specifications, were measured at sea level and the performance of the generator, engine or equipment may vary according to the altitude at which it is operated.
- 5.3 Drawings, descriptive matter, weights, dimensions and specifications appearing in any manufacturers' documents are approximate only and are subject to modifications without notice.

6. **INSTALLATION**

- 6.1 The Purchaser is responsible for arranging for the installation of the relevant generator set, engine or equipment by a suitably qualified person and shall bear all costs, risks and liability in respect of such installation. The costs of installation are not included in the purchase price of the goods.
- 6.2 The qualified person appointed by the Purchaser must provide a signed certificate to the Purchaser –
 - 6.2.1 detailing the installation work performed, including the electrical connecting, load testing and phase balancing;
 - 6.2.2 stating that the generator set, engine or equipment purchased is used in the correct application for which it was manufactured, which certificate must be retained for inspection by the Seller should the need arise, in particular for any warranty purposes.

7. **EXCLUSION OF WARRANTIES**

Save to the extent expressly provided in the warranty set forth in clause 9, the Seller gives no guarantee or warranty, express or implied, nor makes any representations of any nature whatsoever in respect of the materials utilized in any generator sets, engine or equipment supplied or installed or repairs effected by it, nor as to the fitness of any such generator sets, engine or equipment installation or repairs for any purpose for which they are required whether such purpose has been communicated to the Seller or not.

8. **LIMITATIONS OF LIABILITY**

- 8.1 The sole liability of the Seller shall be as provided for in terms of the warranty furnished to the Purchaser in terms of clause 9.
- 8.2 To the fullest extent permissible in law, the Seller shall not be liable for any contingent damage or losses, for loss of profit or damages, direct or indirect, under any circumstances whatsoever, consequential or otherwise, which may be sustained by the Purchaser as a result directly or indirectly of:
 - 8.2.1 Generator sets, engines or equipment supplied by the Seller being defective;
 - 8.2.2 Generator sets, engines or equipment repaired by the Seller being defective due to defective workmanship or materials;
 - 8.2.3 Any delay in delivery of any generator sets, engines or equipment by the Seller;
 - 8.2.4 Any delay in effecting any repairs;

9. **WARRANTY**

- 9.1 When used in correct applications for which the unit was designed and built, **GENERATOR SETS, ENGINES AND EQUIPMENT OF 10KW AND LARGER** are warranted to be free of defect, excluding electronic or electrical components, for a period of twelve months or 1000 hours operation from date of sale, whichever occurs soonest. (Excluding generators powered by high speed engines. Refer 9.2)
- 9.2 When used in correct applications for which the unit was designed and built, **GENERATOR SETS, ENGINES AND EQUIPMENT OF 9.9KW AND LOWER** are warranted to be free of defect, excluding electronic or electrical components, for a period of six months or 500 hours operation from date of sale, whichever occurs soonest.
- 9.3 If any generator, engine or equipment is damaged or shows a defect during the warranty period the Purchaser will immediately inform the Seller of the damage or defect and thereafter must obtain the Seller's written consent to effect any repairs to the generator, engine or equipment. The Purchaser may not repair or make arrangements to repair the generator engine or equipment without the Seller's written consent. Failure to comply with this clause 9.3 will render the warranty void.
- 9.4 Save as contemplated in clause 10.4, the Seller will not be liable for any expenses (including cost of insurance) incurred in the removal, or replacement, or carriage of the relative generator set, engine or equipment between the Purchaser and /or the Purchaser's customer and / or the Seller's premises, as may be applicable for purposes of assessing the generator, engine or equipment or effecting repairs thereto.
- 9.5 If the Purchaser seeks to institute a warranty claim, it must do so in accordance with the provisions of clause 12.
- 9.6 This warranty is only valid when all conditions as laid down in any warranty given by the relevant manufacturer of the goods have been fulfilled.

10. RETURNED GOODS

- 10.1 The Seller is under no obligation to accept the return of any of the goods.
- 10.2 Only once the Purchaser has completed and submitted a claim form as contemplated in clause 12 and such form has been accepted by the Seller and the return of the relevant goods authorised by the Seller, may the Purchaser return the relevant goods . The Seller will not be liable for any costs relating to the unauthorised return of any goods.
- 10.3 Where it is impractical for a generator set of 10KW or larger to be returned to the Seller for investigation of a claim, or where the Purchaser requires assistance regarding a generator set, engine or equipment of such size, the Seller may at its sole discretion elect to inspect the generator set, engine or equipment where it is located. A quotation for the cost of travel and labour will be submitted to the Purchaser, who will be required to pay the amount quoted in advance of the site visit.
- 10.4 The Purchaser will be liable for all travel and labour costs incurred in the inspection and transport for return of generators sets, engine or equipment. The Seller shall reimburse these costs in the event that a warranty claim is subsequently accepted by the Seller.

11. THE WARRANTY PROVIDED IN TERMS OF CLAUSE 9 SHALL NOT APPLY IN RESPECT OF NOR COVER:

- 11.1 any accessories or proprietary fittings made in respect of the goods, whatsoever;
- 11.2 electronic or electrical components of the goods, including but not limited to the coils and wiring which form part of the goods;
- 11.3 goods used for any purposes other than that for which they are intended, or used in a manner other than as prescribed by the Seller or manufacturer, or where the goods are operated outside of the manufacturer's specifications as set out in the manuals provided to the Purchaser as contemplated in clause 2.3;
- 11.4 goods which have been modified or repaired by any unauthorised person or are damaged by the Purchaser or any third party in any way;
- 11.5 any defective parts which, in the reasonable opinion of the Seller, have been damaged by fair wear and tear, or by the use of oil (lubricating or fuel) not recommended by the manufacturer, or by failure to maintain and service the goods according to the manufacturer's instructions as set out in the manuals provided, or by any other form whatsoever of improper use thereof, or from any alterations whatsoever thereto.
- 11.6 any goods which have been altered or repaired by any unqualified or unauthorised person in any manner which in the reasonable opinion of the Seller has caused the alleged defect. This includes instances where the configuration of the engine has been altered or modified to suit the requirements of the Purchaser's application.
- 11.7 use of spare parts in relation to the goods other than those recommended by the Seller or the manufacturer;
- 11.8 any goods which have been fitted or installed by any person not suitably qualified to do so or if the Purchaser has failed to retain the installation certificate referred to in clause 6.2 above.

12. NO WARRANTY CLAIM WILL BE ENTERTAINED UNLESS THE PURCHASER:

- 12.1 contacts the Seller, obtains the necessary claim form, completes and submits the claim form to the Seller within 7 days of any alleged defect becoming apparent. The Purchaser, once having submitted the completed claim form, must then adhere to the claim policy and procedures that have been instituted by the Seller;
- 12.2 provides the original invoice for goods;
- 12.3 returns the alleged defective goods to the Seller carriage paid, with necessary oil samples where applicable, when requested to do so by the Seller, together with any other parts reasonably required in order to properly investigate the claim.

13. PROTECTED CONSUMER

To the extent that the Purchaser is protected consumer –

- 13.1 the following sentence shall be deemed to have been added at the end of clause 2.4 –
"The Purchaser may request to cancel an order if the provisions of section 17 of the Consumer Protection Act are applicable, in which event the Seller may impose a charge equal to 2% of the value of the goods ordered."
- 13.2 the following sentence shall be deemed to have been added at the end of clause 3.4 -
"Should the delivery date be deferred by more than 30 days from the agreed delivery date or should the Seller not be able to deliver all or any of within that deferred period of 30 days, the Purchaser shall be entitled to cancel this agreement, to return

any goods already received (provided they are in their original packaging and saleable as new) and the Seller shall refund to the Purchaser all amounts already paid to the Seller on account of the purchase price.”

- 13.3 clause 4.3 shall not apply to the extent that the Purchaser is relying on the provisions of section 20 and/or 56 of the Consumer Protection Act and the goods so returned shall be returned at the Seller's risk and expense.
- 13.4 clause 7 shall not apply to the extent that the Purchaser seeks to rely on the provisions of section 55 and/or 56 of the Consumer Protection Act.
- 13.5 clause 8, 9 and 10 shall not apply to the extent that the Purchaser seeks to rely on the provisions of section 54, 55 and/or 56 of the Consumer Protection Act.

SPECIAL NOTICE

USE OF GENERATORS AND OTHER EQUIPMENT FITTED WITH ENGINES

- Any alterations or modifications, or use of engines, generators and other equipment working conditions for which it was not designed by the manufacturer, will render the warranty null and void.
- Always read the product manual and instructions provided by the Seller and/or Manufacturer before installation/use.
- The Seller will not honour the warranty unless the proper maintenance procedures and instructions have been followed in respect of the goods.

When working in dusty environments, goods must be serviced more frequently

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