

Tarplett Generator Services Ltd

3A Cobham Road, Pershore, Worcestershire, WR10 2DL

Terms and Conditions of Sale or Service

Definitions

- | | | |
|-----|---------------------|--|
| 1.1 | "Company" | Tarplett Generator Services Limited. |
| 1.2 | "Customer" | The customer of the Company. |
| 1.3 | "Contract" | Any contract entered into for the supply of Goods or Services by the Company to the Customer. |
| 1.4 | "Goods" | Any goods forming the subject matter of any Contract including (where the context so admits) Services. |
| 1.5 | "Nominated Contact" | The person identified on the Company's order acknowledgement. In default of any nomination, any director of the Company or the Company Secretary of the Company. |
| 1.6 | "Services" | Any services provided by the Company to the Customer either as a Contract for the supply of Services alone or the Services element of any Contract to supply Goods and Services. |

2 Quotations, contracts and variations

- 2.1 Quotations are for discussion and negotiation only and not open for unilateral acceptance by the Customer. They may be withdrawn at any time and in any event shall be deemed to have been withdrawn after 30 days from the date of the quotation or other period therein stated.
- 2.2 These conditions shall be incorporated in all Contracts to the exclusion of any terms or conditions referred to by the Customer and supersede any previous conditions of sale of the Company. Acceptance by or on behalf of the Customer of any delivery or performance tendered by the Company shall in any event be conclusive evidence of the Customer's acceptance of these conditions.
- 2.3 Each Contract supersedes all previous oral or written communications between the Company and the Customer not referred to in any written acknowledgement by the Company of the Customer's order and the Company does not authorise the giving of presentations on its behalf by any person unless confirmed in writing and signed by the Nominated Contact. In this regard the Customer specifically acknowledges that any Contract entered into with the Company is not entered into in reliance on any representation made by any officer, employee or agent of the Company
- 2.4 No amendment of any Contract or these conditions shall bind the Company unless in writing and signed by the Nominated Contact.

3 Prices

- 3.1 The Company's prices exclude VAT, where applicable, and all other taxes or duties of whatsoever kind and unless otherwise agreed in writing by the Company are those stated in the Company's quotation exclusive (in the case of Goods) of carriage and insurance. The Company reserves the right, at the Company's discretion, to vary any prices quoted by it for any costs incurred by the Company after the date of the quotation as a result of (a) any alterations in specifications, quantities or production, delivery or performance schedules or any suspension of work requested by the Customer, (b) any delay in the supply by or on behalf of the Customer of any instructions, data or materials (including "free issue" items) or any inaccuracy, insufficiency or defect therein or non-conformity to their specifications (whether or not apparent on inspection), (c) any fluctuation in the cost of materials, equipment, labour, transport or utilities, arising in each case from whatever cause.

4 Payment

- 4.1 All amounts due to the Company, unless otherwise agreed in writing, shall be payable in the currency stated on the Company's quotation or as otherwise agreed not later than the end of the month following that in which the Company's invoice is issued without any discount (unless otherwise agreed in the quotation), set-off or other deduction whatsoever. The time for payment of any invoice shall be of the essence.
- 4.2 Without prejudice to any other rights of the Company, interest shall be payable on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgement) on a daily basis at the rate of eight (8) percent over the base rate from time to time quoted by the Company's bankers compounded monthly. The Customer shall also pay (as a debt) all legal and other costs incurred by the Company in recovering (a) any amounts owing from the Customer and (b) any Goods in which title has been retained by the Company. Such costs shall be due for payment immediately on invoice.
- 4.3 The Company reserves the right to apply amounts received first in settlement of interest on overdue debts and then of debts due beginning with the oldest.
- 4.4 Without prejudice to any other of its rights and notwithstanding any other agreement or arrangement with the Customer, the Company shall be entitled by giving written notice to the Customer at any time to require the Customer to tender the price of the Goods or Services in a manner satisfactory to the Company and to refrain from delivering the Goods or Services until the price has been so tendered.
- 4.5 If the Customer fails to make any payment when and as due or other circumstances entitling the Company to terminate the Contract arise or if the Customer exceeds any financial limit on the Customer's account from time to time applied by the Company then the price of all such goods as have been delivered or prepared for any order or orders of the Customer shall forthwith thereupon become immediately due and payable.

5 Delivery and risk

- 5.1 Goods shall be delivered and risk in them shall pass to the Customer when they are made available at the Company's premises or other delivery point stated in any order acknowledgement given by the Company or as otherwise agreed in the quotation.
- 5.2 Where Goods are made available at a point other than the Company's premises, the Customer shall be responsible for all off-loading arrangements and costs and the Company reserves the right to deliver the goods at the nearest point of suitable access.
- 5.3 If Goods are consigned to a destination outside the United Kingdom mainland any trade terms referred to in the Company's order acknowledgement shall, to the extent consistent with these conditions, be as defined in the edition of "Incoterms" then current.

- 5.4 Times quoted for delivery of Goods and/or Services are subject to the availability of goods and relevant personnel for the Contract and the supply of all instructions or other matter required from the Customer.
- 5.5 The Company will endeavour subject to these conditions to comply with any date given by it but shall not be liable for any loss, damage or expense (whether direct or indirect) arising from any delay or failure in delivery or performance from any cause whatsoever nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance or repudiate any Contract.
- 5.6 If the Customer fails to take delivery of any Goods when tendered or to provide adequate delivery instructions or to collect them when notified they are ready for collection the Company at its discretion may exercise any or all of the following rights, namely, to store the Goods at the risk of the Customer, to require the Customer pay all storage, transportation, handling or other charges (including expenses in connection with the delay or detention of vehicles) incurred by the Company as a result of such failure or to require the Customer to pay for the Goods as though delivery had taken place.
- 5.7 The Company may deliver the Goods by instalments each of which shall be deemed to be the subject of a separate Contract and, unless otherwise agreed in writing by the Nominated Contact, no failure by the Company in any one or more instalments shall entitle the Customer to repudiate any Contract for Goods previously delivered or to refuse to accept any undelivered Goods.
- 5.8 The Company may determine the form of transport or packing of any Goods whose price is agreed in writing to include carriage and charge extra for any special arrangements requested by the Customer.

6 Title

- 6.1 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and not pass to the Customer (who shall, nevertheless, subject to the conditions stated below, be entitled to resell them as principal only, in the ordinary course of business) until the Company has received in cash or cleared funds payment in full of the price of the Goods and of all other debts for any other goods or services owed to it by the Customer on any account until title passes:
- 6.1.1 the Customer shall hold the Goods as bailee for the Company and ensure that they are at all times clearly identified as the property of the Company
- 6.1.2 the Customer shall notify any purchaser of the Goods of the Company's interest and title in the Goods where title is still retained by the Company (in accordance with clause 6.1 above) at the time of sale by the Customer.
- 6.2 the Company shall be entitled at any time on demand to: -
- 6.2.1 repossess, remove from other equipment (without being liable for any damage thereby occasioned) and sell all or any of the Goods and thereby terminate (without any liability to the Customer) the Customer's right to sell them, and
- 6.2.2 enter any premises where the Goods are located for the purpose of inspecting or repossessing them.
- 6.3 The Company shall, without prejudice to any other remedy, be entitled to maintain an action for the price of the Goods although title in them has not passed to the Customer.
- 6.4 The Company transfers to the Customer only such title and rights of use as the Company has in any Goods and in the case of material provided by any third party shall transfer only such title and rights as that party had and has transferred to the Company.

7 Warranty, discrepancies and returns

- 7.1 New equipment, components and spare parts supplied by the Company are warranted to be free from defects in materials and workmanship at the time of delivery for a period of twelve (12) months from the date of commissioning or eighteen (18) months from readiness to dispatch, whichever is the earlier.
- 7.2 The above warranty shall not extend to: -
- 7.2.1 any accessories or proprietary fittings whatsoever.
- 7.2.2 Goods used for a purpose for which they were not designed.
- 7.2.3 Goods, which in the opinion of the Company have been altered, used, serviced, maintained or stored otherwise than in accordance with the Company's recommendations (whether oral or in writing).
- 7.2.4 Goods from which the Company's number or markings have been removed or altered.
- 7.2.5 Defects arising from any drawing design or specification supplied by the Customer.
- 7.2.6 Defects arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse, alteration or repair without the Company's approval.
- 7.2.7 Defects arising from failure to follow the Company's recommendations and operating practices (whether oral or in writing) and subject to any specified load limitations.
- 7.2.8 Parts, materials and equipment not manufactured by the Company or damage caused by such items, where the Company reserves the right to limit its liability to assigning to the Customer (so far as it is able) any warranty given by the manufacturer of those goods.
- 7.3 Where any valid claim by the Customer for breach of the warranty provided above is notified to the Company in accordance with these conditions, the Company may at its sole option elect to repair or replace the defective items free of charge.
- 7.4 The Customer shall only be entitled to the benefit of the terms of the above warranty on condition that the Customer has duly performing all of its obligations under the Contract for the supply of Goods including (but not limited to) payment of all sums due and owing by the Customer to the Company under any Contract.
- 7.5 If at the time of delivery any Goods are missing, lost, damaged, defective or otherwise not in accordance with the Contract the Company will, at its expense, subject to these conditions, in its discretion, within a reasonable period, replace the Goods affected at the original point of delivery or otherwise make good the discrepancy or allow credit for their invoice value.
- 7.6 The Company shall have no liability in respect of any such discrepancy unless the Customer has given the Company notice thereof
- 7.6.1 (in case of any discrepancy which is reasonably apparent on inspection) within three (3) days of receipt of the Goods, or
- 7.6.2 (in case of loss of a whole consignment) within seven (7) days from the date of invoice, or
- 7.6.3 (in case of a discrepancy which is not reasonably apparent upon inspection) immediately upon the discrepancy becoming apparent and in any event not later than three (3) months (or other period stated in the Company's quotation) after receipt of the Goods.

7.7 The Company shall have no liability in respect of any claim by the Customer in respect of any discrepancy affecting the Goods or under the terms of the above warranty unless: -

7.7.1 notice of the claim is given in writing, and

7.7.2 the Customer affords the Company reasonable opportunity and facilities for the investigation of any claim and complies with any request by the Company for the return, properly packed and carriage paid, of any Goods for examination by the Company, and

7.7.3 the opportunity for the Company to investigate any claim is given (in the case of any discrepancy which is reasonably apparent on inspection) within a period of not less than three (3) days from the date on which notice of the claim is given and before the Goods are used or re-sold.

7.8 No Goods may be returned unless the Company has requested their return in writing.

7.9 Unless otherwise agreed in writing the Company shall have no liability for: -

7.9.1 any loss of or damage to any Goods in transit after despatch from the Company's premises except that it will if requested to do so by the Customer, take such steps as the Customer reasonably requests to make a claim against the carrier on behalf of the Customer or assist the Customer to make such a claim and any proceeds of such claim which the Company receives (less any reasonable expenses) will be accounted for to the Customer

7.9.2 any Goods which after delivery have been subjected to any incorrect handling or storage or suffered any misuse, neglect or accident or had any modification repair or remedial work carried out by any person other than the Company or in accordance with its written recommendations or instructions, or

7.9.3 any discrepancy, which results from any inaccurate or incomplete information, details or materials, supplied by or on behalf of the Customer

7.9.4 the cost of removal of any Goods to be replaced or parts thereof or the refitting or any repaired or replaced Goods or parts thereof

7.9.5 any discrepancy in the Goods or any replacement goods which appears after the claims period applicable to the original Goods has expired.

7.9.6 any bespoke products (items altered from standard to suit a Customer's specification different from the norm) are exempt from the right to return. The order can be cancelled pre-production, however when production commences the order will become non-returnable and non-refundable, unless discussed and agreed in writing with Company management.

7.10 Any items replaced by the Company following its acceptance of any claim shall become the Company's property and shall not be used or disposed of except in accordance with the Company's written instructions.

7.11 Goods in respect of which no claim is made in accordance with these conditions shall be deemed to have been accepted by the Customer in accordance with the Contract and the Company reserves the right to charge the Customer with any administration, handling or other costs it incurs in connection with any claims which it does not accept which shall be recoverable as a debt.

7.12 These conditions shall extend (so far as they are capable of application thereto) to discrepancies in any Services provided by the Company which the Company is satisfied did not conform to their Contract description or were not carried out with reasonable skill and care.

8 Extent of liability

8.1 Except to the extent stated in these conditions or otherwise agreed in writing by it: -

8.1.1 the Company shall have no obligation, duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever under or in connection with the Contract other than for death or personal injury resulting from its negligence or for fraud on the part of any of its employees whilst acting in the course of their employment, and

8.1.2 the Company accepts no liability for the condition or quality of any Goods or their packing or any life or wear of any Goods or their suitability for any particular purpose or use under specific conditions (whether or not known to the Company) or for any consequential loss or damage suffered by the Customer under or in connection with the Contract, whether directly or indirectly, including but not limited to wasted time or expenditure, loss of profits, production, business revenue, expected savings or goodwill or any claim against the Customer by any person and the Customer shall be solely responsible for any such claim.

8.2 The Company shall be discharged of all liability to which these conditions apply unless proceedings are commenced and served within twelve (12) months after the Customer became aware (or should reasonably have become aware) of the facts giving rise to such liability.

8.3 The Company's liability in connection with the Goods shall in no circumstances exceed their invoice price.

8.4 The Company shall have no liability or responsibility on how the equipment is used. The Company sells all generators for stand-by use only, unless specified otherwise in writing. The Company does not encourage or endorse the use of diesel generators for prime or continuous use.

9 Termination or suspension

9.1 If the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other agreement with the Company, is unable to pay its debts in the ordinary course of its business, has a receiver, manager, administrator, administrative receiver or trustee in bankruptcy (as the case may be) appointed for all or any part of its undertaking, assets or income, is the subject of any bankruptcy order, has a resolution passed for its winding up, has a petition presented to any court for an administration order or for its winding up, enters into any composition or arrangement with its creditors (whether formal or informal), has any distraint or execution levied on any of its assets, suffers any action similar to any of the foregoing in any jurisdiction or ceases to trade or the Company bona fide believes that any of the foregoing matters may occur, then, in any such event, the Company shall, without prejudice to any other remedy, be entitled, at its discretion, without liability to the Customer, by

giving the Customer written notice at any time or times, to suspend its performance of the Contract or (whether or not such performance has previously been suspended) to terminate such Contract.

- 9.2 The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended to the Customer and no such indulgence or forbearance in respect of any breach shall operate as a waiver in respect of the same or any subsequent or other breach.

10 Force Majeure

- 10.1 The Company shall not be liable for any delay or other failure to perform the whole or any part of the Contract resulting from any cause whatsoever beyond the Company's control existing at the date of the Contract or arising thereafter including but not limited to fire, explosion, breakdown or failure of plant or machinery, lack or failure of transportation facilities and/or fuel supplies, supply of labour, materials, power or supplies, strike, lockout or labour dispute (whether or not at the Company's works), illness, epidemic, flood, drought, war, civil commotion, or restriction of any authority or governmental agency and the time for performance shall be extended by the period of any such delay.

11 Tests

- 11.1 The Company shall have no liability for any failure of any Goods on test or in use outside the Company's premises to attain any performance figures unless the Company has specifically guaranteed the same in the Contract subject to any tolerances specified or agreed to by the Company and subject also to proof by the Customer that it has properly used the Goods in accordance with all instructions and conditions for use specified by the Company and the instructions of the manufacturer of any equipment in or with which the Goods are to be installed or used.
- 11.2 Where any inspections or tests to be conducted at the Company's premises and the Customer fails to attend upon reasonable notice of up to 14 days the Company shall be entitled to proceed in the Customer's absence and the Customer shall be deemed to have accepted the results of such inspection or tests.
- 11.3 Where any inspections or tests are to be conducted or carried out at the Customer's premises and the Customer fails upon reasonable notice of up to 14 days to carry out or permit the same to be carried out or has commercially operated the Goods before the date for inspection or testing such inspections or tests shall be deemed to have been successfully carried out.

12 General

- 12.1 The acceptance of any cancellation of the Contract requested by the Customer shall be at the Company's discretion and take effect only when written confirmation of such acceptance has been given by the Company by the Nominated Contact.
- 12.2 The Customer, unless otherwise agreed in writing, will be deemed to be acting as a principal and not as an agent for any other person.
- 12.3 Any specifications, drawings, particulars of weights and dimensions and other technical information contained in the Company's quotations, catalogues, price lists, advertisements or elsewhere are approximate only and intended merely to present a general idea of the Goods and (unless otherwise agreed in writing by the Company) are not to form part of the Contract. The Company reserves the right to discontinue the sale of particular products or alter their designs and specifications without notice at any time and to deliver Goods conforming to the altered design or specification in fulfilment of any Contract. No contract shall constitute a sale by sample notwithstanding that any Goods or products may have been exhibited to or inspected by the Customer.
- 12.4 The Company shall have no liability for any advice, opinion or information furnished by the Company, its servants or agents unless given in writing by the Nominated Contact in response to a written request by the Customer referring to the Contract.
- 12.5 Where the Company prepares drawings, designs or other data on the basis of information provided or suggestions given by the Customer, all rights therein (including copyright and design rights) and all materials or other items prepared by the Company shall, unless otherwise agreed in writing, be the Company's property and the customer shall not copy or reproduce the same in whole or in part in any form or allow others to do so. The Company is never the main design contractor and will not be held liable for advice or suggestions given throughout the design stage.
- 12.6 The Customer shall indemnify and hold harmless the Company against any and all claims, proceedings, costs, damages, liabilities and expenses incurred or suffered by the Company arising from any instructions, data, drawings, specifications, goods, services or other items supplied by or on behalf of the Customer to the Company or from any failure to supply the same or from any infringement or alleged infringement of the rights of any third party claimed under or in relation to any patent, registered design, trade mark, copyright, design right, breach of confidence or otherwise howsoever resulting from the Company's use of any of the foregoing items. The Company shall have no liability for any inaccuracy or inadequacy of such items and shall be entitled to charge extra for any costs resulting there from.
- 12.7 The Company may at its discretion sub-contract all or any of its obligations under the Contract but the Contract shall not be assigned by the Customer without the Company's prior written consent.
- 12.8 The Company shall have a lien on any Goods in the Company's possession for all sums due at any time from the Customer on any account and shall be entitled to keep possession of or at its option sell or dispose of the same as agent for and at the expense of the Customer and apply any proceeds in and towards the payment of such sums on twenty eight (28) days written notice to the Customer.
- 12.9 The Company reserves the right by giving written notice to the Customer at any time to require the Customer to collect any materials or equipment and to destroy or otherwise dispose of any such materials or equipment not collected by the Customer within 14 days from the date on which such notice is given, without any liability to the Customer.
- 12.10 The Customer shall be responsible for obtaining and maintaining in force any import or export licences, visas, work permits or the like and the payment of any duties taxes or other charges in connection with the employment overseas of any of the Company's personnel and in particular the Company shall be entitled to charge extra for any costs incurred by it as a result of such failure.
- 12.11 The subject matter of the Contract and any technical information supplied thereunder is confidential and the Customer shall not without the Company's prior written consent make any disclosure or unauthorised use thereof except as regards any technical information to the extent that the same is or becomes published otherwise than in breach hereof.
- 12.12 Any notice given in writing if sent by facsimile or forwarded by first class prepaid letter post to the receiving party at its business address as last notified in writing to the other party shall be deemed to have been given on the date of transmission of the facsimile

(if receipt is confirmed in writing) or 2 working days (or 7 working days in the case of customers outside of the United Kingdom) following the date of posting.

- 12.13 All headings in this agreement are for reference purposes only and shall not affect the interpretation of the particular clause.
- 12.14 Notwithstanding any other provision in these terms and conditions, nothing in these terms and conditions shall create or confer (whether expressly or by implication) any right or other benefits whether pursuant to The Contracts (Rights of Third Parties) Act 1999 or otherwise in favour of any person(s) not a party to any Contract.
- 12.15 In the event that any provision in these terms and conditions is declared by a judicial or other competent authority to be void, voidable, illegible or unenforceable for any reason, the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality and the remaining provisions of these terms and conditions shall remain in full force and effect.
- 12.16 The Customer authorises the Company to carry out checks (including enquiries relating to directors and other individuals) with credit reference agencies and to keep a record of that search and to make available to such agencies information relating to the conduct of the Customer's account and the Customer acknowledges that the agencies concerned may keep and store the information and supply it to other businesses in assessing applications for credit and/or fraud prevention.

13 General Data Protection

- 13.1 By entering into a contract with the Company you agree to the Company holding data in relation to the goods and services provided and any details required by the Company to fulfil its legitimate obligations. This includes but is not limited to addresses, names, addresses, contact information including work/personal email addresses. We may also require (in some circumstances) your personal information in order to comply with UK legislation such as money laundering or for identification purposes.

14 Law and jurisdiction

- 13.1 The Contract shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts in all matters relating to the Contract except to the extent the Company (at its election) involves the jurisdiction of the courts of any other country.

Reviewed August 2022

Registered office: 3 – 6 Cobham Road, Pershore, Worcestershire, WR10 2DL
Registered in England No: 03094630