

Generators Australia Pty Ltd

General Terms and Conditions of Sale

The following terms and conditions shall apply to each agreement for the sale of Goods and/or the supply of Services: -

1. Definitions

- a. "Seller" shall mean Generators Australia Pty Ltd **ABN: 09 114 816 465**
- b. "Buyer" shall mean the Buyer named on any quotation, invoice, service agreement, or any other documentation produced in relation to an agreement for the supply of Goods and/or Services, or any person acting on behalf of and with the authority of the Buyer.
- c. "Price" shall mean the cost of the Goods/Services as agreed between the Seller and the Buyer subject to clause 4 herein.
- d. "Goods" shall mean all Goods supplied by the Seller to the Buyer or ordered by the Buyer but not yet supplied and includes Goods described on any quotation, invoice, service agreement, or any other document supplied by the Seller.
- e. "Third Party Equipment" shall mean any equipment other than that supplied by the Seller.
- f. "Services" shall mean all Services supplied by the Seller to the Buyer including Services described on any quotation, invoice, service agreement, or any other document supplied by the Seller.

2. Jurisdiction

- a. All transactions shall be governed by and construed in accordance with the laws of the State of Western Australia
- b. Should any dispute arise between the Buyer and the Seller, both parties agree to submit to the exclusive jurisdiction of the Courts of the State of Western Australia.

3. Offer and Acceptance

- a. Any request from the Buyer to the Seller for the supply of Goods/Services however made shall constitute acceptance of the terms and conditions contained herein.
- b. All quotations and or orders are subject to acceptance by the Seller's Managing Director.
- c. Where more than one Buyer has entered into an agreement with the Seller for the supply of Goods/Services, all Buyers shall be jointly and severally liable for all payments of the Price.
- d. The terms and conditions contained herein constitute the entire agreement between the Buyer and the Seller and shall prevail over any terms and conditions presented to the Seller by the Buyer.
- e. These terms become binding upon acceptance and may thereafter only be altered or revoked with the written consent of the Seller.
- f. Any changes to the Buyer's details, including name, address, telephone, email, or any changes in ownership structure of the Buyer requires written notice of (10) days.

4. Price

- a. The Price will be determined by the Seller's quotation, invoices, service agreement, or any other documentation provided by the Seller to the Buyer.
- b. The Seller's quoted price will be binding upon the Seller for a period of fourteen (14) days after the date of the quotation.
- c. In the event the Buyer has entered into an arrangement, or received a quotation for finance, the Seller shall not be liable for interest rate fluctuations which may affect the overall price.
- d. Any variation from the original agreed works or specifications may affect the Price, and any such variations to the Price will be agreed between the Seller and the Buyer in writing. Payment for all variations must be made in full at the time of their completion.

5. Payment Terms

- a. Where a credit facility has been granted, the Buyer agrees to pay all amounts on or before the due date as stated on the invoice.
- b. In the absence of a credit facility being granted, payment in full for all Goods/Services will be due and payable to the Seller upon delivery.
- c. At the Seller's sole discretion for special built units a non-refundable deposit may be required before the supply of any Goods or Services.
- d. Payment will be made by cash, credit card, direct deposit, or by any other method as may be agreed between the Buyer and the Seller.
- e. All applicable merchant fees for credit card payments and bank fees for processing of overseas payments shall be added to the price.

6. Delivery

- a. The Buyer shall be responsible for making any necessary arrangements to take delivery of the Goods, including access to the site, and ensuring the site is compliant with all relevant Occupational Health, Safety and Welfare regulations.
- b. Unless otherwise agreed, the Buyer shall be responsible for any delivery costs incurred by the Seller.
- c. Should the Seller fail to deliver all or part of the Goods, the Seller shall not be liable for any loss or damage incurred by the Buyer, or any of the Buyer's agents, customers, related companies, or contractors.
- d. Delivery of the Goods to any third party nominated by the Buyer (including carriers) is deemed to be delivery to the Buyer.
- e. Delivery dates are subject to change and are only used as a reference.

7. Notification of Defects / Returns

- a. The Buyer shall inspect the Goods upon delivery and notify the Seller within forty-eight (48) hours of any alleged defects, or failure to fulfil the quotation.
- b. Should the Buyer fail to give such notification, the Goods will be deemed to be in compliance with those ordered, and free from any defects whatsoever.
- c. Refunds will only be issued on Goods if they are returned within fourteen (14) days of dispatch and are undamaged in original packaging.
- d. No refunds will be accepted for specialty-built Goods or spare parts ordered that are not items usually stocked by the Seller.

8. Warranties

- a. Goods not manufactured by the Seller are supplied to the Buyer on an “as is” basis without warranty of any kind. The Seller shall assign the Buyer, in so far as it is able to do so, the benefit of any condition, warranty or guarantee, express or implied, in the Seller’s contract with its own supplier.
- b. Where the Seller has agreed in writing that the Buyer is entitled to claim under warranty, the Seller’s liability is limited to, at the Seller’s discretion, replacing or repairing the Goods.
- c. The Seller accepts no responsibility for any Third-Party Equipment which may prevent or impair proper functionality of the Goods
- d. The Seller accepts no responsibility for loss or damage to the Buyer, financial or otherwise, arising from a delay in the time taken for the Seller to replace or repair any Goods covered by the warranty.
- e. Generators Australia’s standard warranty period is 12 months or 1200hours, whichever comes first. **Please refer to Generators Australia Capital Sales warranty for all terms and conditions**

9. Conditions of Warranty

- a. The Seller’s warranty will not be applicable in a situation where;
 - i. The Buyer has failed to follow instructions supplied by the Seller in relation to proper use of the Goods
 - ii. The Goods have been used by any operator who does not hold the appropriate licence to do so.
 - iii. The Goods have been used in a manner other than their original intended use.
 - iv. The Goods continue to be used after any fault or defect has become known to the Buyer or would have become known to a reasonable person.
 - v. The defect or fault has occurred from reasonable wear and tear in use.
 - vi. The defect or fault has occurred as a result of circumstances beyond the control of either the Buyer or the Seller.
- b. The warranty will become void if any maintenance or alteration is made to the Goods without the Seller’s knowledge and consent.

10. Registered Security

The Buyer hereby charges in favor of the Seller all of the Buyer’s estate and interest in any land and in any other assets, whether tangible or intangible, in which the Buyer now has any legal or beneficial interest or in which the Buyer later acquires any such interest, with payment of all monies owed by the Buyer, and consents to the lodging by the Seller of a caveat or caveats which note its interest in that real property.

11. Default

- a. The Buyer hereby agrees that if the Buyer should:
 - i. As an individual, commit an act of bankruptcy; or
 - ii. As a company, pass a resolution for winding up or have a summons to wind up issued against it; or
 - iii. Become subject to any form of external administration; or
 - iv. Enter into an arrangement regarding outstanding payment with any of its creditors; or
 - v. Allow any invoice to remain in arrears for a period of over thirty (30) days;All monies currently owed to the Seller shall become due and payable immediately, and the Seller shall have the right to terminate the supply of Goods and Services to the Buyer.
- b. Should the Buyer fail to pay any invoice when due, the Buyer will be responsible for any additional costs associated with recovery of all outstanding amounts, including but not limited to the costs of a solicitor, and any cost incurred by the Seller to its nominated collection agency.
- c. Interest on overdue accounts may be charged at a rate not exceeding the prevailing bank overdraft rate and the Buyer expressly undertakes to pay all such interest.
- d. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

12. Retention of Title

- a. Ownership, Property, and Title in all Goods shall remain vested in the Seller until the Buyer has paid all monies owing to the Seller for all Goods/Services provided
- b. The Goods shall be kept separate and clearly identifiable as property of the Seller until such time as title in the Goods passes to the Buyer.
- c. The Seller may request in writing that the Buyer return the Goods or any part of them at any time before title in the Goods has passed to the Buyer.
- d. Should the Buyer fail to return the Goods to the Seller upon request, the Seller, without prejudice to any of its other rights and remedies under this agreement, reserves the right of entry to the Buyer’s premises or any other premises where the Goods may be stored, by its servants or agents for the purpose of recovering or re selling the Goods, and any cost incurred as a result of such action will be the responsibility of the Buyer.

13. Risk

- a. Notwithstanding retention of title as specified in clause 12 hereof, all risk passes to the Buyer upon delivery.
- b. Should any of the Seller’s Goods become damaged, lost, stolen, or destroyed prior to title in the Goods passing to the Buyer, the Buyer shall be responsible for any cost incurred by the Seller for the repair or replacement of the Goods.

14. Cancellation

- a. The Seller may cancel delivery of Goods/Services at any time before delivery by giving written notice to the Buyer of not less than five (5) working days.
- b. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- c. At the Seller's sole discretion, the Buyer may cancel delivery of any Goods by giving written notice of not less than five (5) working days to the Seller.
- d. In the event the Buyer cancels delivery of Goods or Services, the Buyer shall be liable for any costs incurred by the Seller up to the time of cancellation, including but not limited to any re stocking fees incurred by the Seller, and the Buyer may forfeit any deposits paid.
- e. In the event the Buyer requests any modifications or additions (special build) to product or requests spare parts be specifically ordered ("the Goods") and subsequently the Buyer cancels the order, the Buyer shall be responsible for;
 - i. any costs incurred by the Seller to restore the Goods to their original condition; and or
 - ii. any loss incurred by the Seller in disposing of such Goods

15. Limitation of Liability.

- a. The liability of the Seller to the Buyer for any reason related to the performance of the Goods/Services under this agreement shall be limited to the amount paid or payable by the Buyer to the Seller for such Goods/Services.
- b. The Seller accepts no liability for spare parts ordered which are unsuitable due to modifications made by the Buyer to any Goods.
- c. The Seller accepts no liability for any direct, indirect, special, consequential, or any other loss or damage to any person or property arising as a result of the Buyer failing to follow any instruction given by the Seller relating to operation of the Goods.

16. Privacy Act 1988

- a. The Buyer hereby gives consent to the Seller obtaining a credit report containing commercial or consumer credit in relation to the Buyer. (Section 18K (1) (h) Privacy Act 1988).
- b. The Buyer agrees that Individual Data provided may be used and retained by the Seller for the following purposes and for other purposes as agreed to between the Buyer and Seller or required by law from time to time:
 - i. Provision of Goods/Services
 - ii. Marketing of Goods/Services by the Seller, its agents, distributors, or contractors.
 - iii. Assessing the credit worthiness of the buyer in relation to extending credit.
 - iv. Exchanging of information with a credit reporting agency or trade reference named by the Buyer.
 - v. Processing of any payment instructions, direct debit facilities and/or credit facilities requested by buyer.
 - vi. Collection of amounts outstanding in the Buyer's account by the Seller's nominated Collection agent or solicitor.
17. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts The warranties, conditions, rights and remedies of the Buyer as outlined in the Commonwealth Trade Practices Act 1974 and the relevant Fair-Trading Act of Western Australia are not intended to be compromised as a result of anything contained in these terms and conditions, except to the degree permitted by those Acts.

18. General

- a. The Seller assumes no responsibility for changes in the laws of Western Australia, or the Commonwealth of Australia which may affect the supply of Goods/Services.
- b. The Seller may sub-contract part or all its obligations under this agreement without the Buyer's consent.
- c. The Seller reserves the right to review these terms and conditions at any time, and if any changes are deemed necessary, the Buyer will be advised of such changes upon them being made and they shall thereupon immediately become binding upon the Buyer.
- d. The granting by the Seller of any indulgence to the Buyer, including but not limited to payment extensions, shall not constitute a waiver of any of the Terms and Conditions contained herein, and shall not prevent subsequent enforcement of any of these Terms and Conditions
- e. Neither the Seller nor the Buyer shall be liable for any breach of any provisions of any contract arising from an act of God, natural disaster, terrorism, war, or any other occurrence beyond the control of either party.
- f. If any Terms or Conditions contained in this document are found to be unenforceable for reasons of invalidity or illegality, the remaining provisions shall not be affected in any way whatsoever.