

# THE GENSET DOCTOR (PTY) LTD TERMS AND CONDITIONS

## 1. APPLICATION

- 1.1 These terms and conditions shall apply to all goods sold by The Genset Doctor (Pty) LTD ("the Company") to the Customer.
- 1.2 No variation of any term set out below, and no indulgence afforded by a party shall be construed as a waiver of the Company's rights, unless the same is reduced to writing and signed by the parties.

## 2. ACCEPTANCE OF ORDERS

- 2.1 All orders are subject to stock availability or prior sale of any goods/stock.

## 3. PRICES

- 3.1 All prices quoted are subject to variation depending on unforeseen circumstances which may arise after the date of quotation and prior to dispatch, namely: -
- 3.1.1 The Company's standard prices increase in terms of its price list;
- 3.1.2 Changes in the cost of freight, insurance or customs duties resulting in cost increases;
- 3.1.3 The rates of sub-contractors and/or suppliers increase.
- 3.2 Quotations shall remain valid for 14 (Fourteen) days from the date thereof.

## 4. PAYMENT

- 4.1 All payments shall be paid in full within 30 days. No terms are permitted unless agreed by the Company in writing. Late payments shall attract interest at the legal rate applicable from time to time, and shall accrue as and from the date when payment is due.
- 4.2 Any medium used for payment such as the post, internet etc, shall be deemed to be the Customer's agent, and shall be used at the Customer's sole risk.
- 4.3 Payments shall be made free of deductions and set-off.
- 4.4 The Company shall have the right to withhold the supply of goods and/or services and to exercise its rights in terms of clause 5 if any amount due by the Customer is unpaid for whatever reason.
- 4.5 Should any amount not be paid by the Customer on due date, then the full outstanding amount which the Customer may owe the Company shall be come due and payable immediately, whether in respect of the goods in question or for any other reason, including amounts which are payable in the future.
- 4.6 Any payment arrangement which may be entered into between the Company and the Customer shall not constitute a novation of the debt or these terms and conditions. Consequently, should the Customer fail to pay in terms of such arrangement, or should such arrangement prejudice the Company's rights in any way, the Company's rights are reserved to proceed at any time, without notice, for the payment of the full debt.
- 4.7 Fuel deliveries need to be paid within 4 days after delivery date. As stated in the Petroleum Products Act (120 of 1977), it is unlawful to wholesale diesel on credit and discounting is not allowed.
- 4.8 If payment for the diesel is not received within the foresaid day a 4% interest per day will apply for late payments.
- 4.9 Alternately a deposit can be held to the value of one month's average use or the capacity of the generator tank.
- 4.10 All SLA (contract) amounts will be paid in advance unless otherwise agreed in writing.

## 5. DELIVERY

- 5.1 Any delivery notes (copy or original) signed by the Customer and/or its authorised representative and/or its nominated agent and held by the Company, shall be prima facie proof that delivery was made to the Customer.
- 5.2 Any time given for delivery shall merely be an estimate. The Company shall not be held responsible or liable for any delays for any reason whatsoever, which will not entitle the Customer to cancel the order or to claim damages. It is specifically agreed, that in respect of this agreement, time is not of the essence.
- 5.3 The company does not perform deliveries; these are sub-contracted and are quoted upon request.

## 6. OWNERSHIP AND RISK

- 6.1 Risk in the goods shall pass to the Customer immediately upon signature of any document acknowledging receipt thereof by the Customer, its representative or its agent. Notwithstanding the passing of risk, ownership in all goods shall remain vested in the Company until the full purchase price has been paid. In the event of a breach of any of these terms and conditions by the Customer, or if the Customer is sequestered or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgment granted against it within 7 (seven) days of the date of judgment, or changes the structure of its ownership, the Company shall be entitled to take possession of the goods without prejudice to any further rights vested in the Company, and is hereby irrevocably authorised to enter upon the Customer's premises to take possession of such goods.
- 6.2 Risk is covered for goods in transit where the company has appointed a transporter to deliver the goods to the specified destination by Roxsure insurance brokers (PTY) LTD. The transit insurance only covers deliveries conducted by the company or one of its appointed agents. All risk in the event of a collection by a non-designated transporter to the goods whilst in transit vests in the Customer. Any customer appointed transporter of the goods is the Customer's agent.

## 7. SPECIFICATIONS

- 7.1 Descriptive matter, weights, dimensions and specifications appearing in any quotation or document provided by the Company are approximate only and are subject to modifications without notice.
- 7.2 Where goods are supplied according to the specifications supplied by the Customer, the Company or its suppliers will not be responsible for the efficient working of those goods nor the fitness of those goods for the purpose for which they are supplied whether said purpose is known to the Company or not.
- 7.3 In instances where the equipment supplied requires installation by an electrician, the electrician contracted by the Customer to attend thereto shall be a qualified and registered electrician, and an appropriate certificate or document evidencing such proper and supervised installation shall be provided to the Company in the event of any claim under these terms and conditions.

## 8. EXCLUSIONS OF WARRANTY

- 8.1 Save to the extent provided in these conditions, the Company gives no guarantees nor warranties, express or implied, nor makes any representations of any nature whatsoever in respect of the materials utilized in any goods supplied or installed or repairs effected by it, nor as to the fitness of any such goods, installations or repairs for any purpose for which they are required whether such purpose be communicated to the Company or not. The sole liability of the Company shall be as provided for by their terms of the guarantee/warranty hereinafter set out.

## 9. PERFORMANCE

- 9.1 All performance figures are approximate only and the Company shall be under no liability whatsoever in respect of any failure to achieve provide or obtain such requirements within reasonable limits.

## 10. LIMITATIONS OF LIABILITY

- 10.1 The Company shall not be liable for any damage or losses of whatsoever nature, whether direct, indirect or consequential, howsoever caused. The Customer's sole relief shall be in terms of clause 11 below.
- 10.2 Should the Company supply goods or parts or do work free of charge in excess of its obligations under these terms and conditions, the Company shall be under no liability whatsoever irrespective of what is set out elsewhere herein, if such goods or parts prove in any way to be defective.

## 11. GUARANTEE / WARRANTY

- 11.1 Service – parts and labour will hold a 3 months' warranty.
- 11.2 All electrical work and installations will hold a 6 months' warranty.
- 11.3 Manufactured generators hold a warranty of 1 year or 1000 hours. Whichever transpires first.
- 11.4 Batteries hold a warranty of 12 months from date of purchase.
- 11.5 All expenses (including costs of insurance) incurred in the removal or replacement or carriage from and to the Customer of such goods or any part thereof will be for the Customer's account.

11.6

This guarantee shall not apply to: -

- 11.6.1 Any accessories or ancillary fittings whatsoever;
- 11.6.2 Any goods used for any purposes whatsoever other than the genuine use for which goods were supplied;
- 11.6.3 Any defective part or parts which in the opinion of the Company has been damaged by fair wear and tear, or which has been damaged by the use of oil (lubricating or fuel) not recommended by the Company or by any other form whatsoever or improper use of or from any alteration whatsoever to the goods;
- 11.6.4 Any goods that have been modified, altered or repaired in any manner which, in the opinion of the Company, has caused the alleged defect, or has altered its performance or reliability;
- 11.6.5 Use of spare parts other than those recommended by the Company.
- 11.7 Any claim under this guarantee will not be entertained unless the claimant.
- 11.8 .
- 11.8.1 Lodges its/his claim in writing to the Company within 7 (seven) days after the alleged defect in question has become apparent;
- 11.8.2 At the same time, submits full particulars of the claim and of the reasons therefore stating in such particulars the date of purchase and full relevant particulars, including original invoice No. and serial numbers of relative products;
- 11.8.3 Unless otherwise requested by the company, returns of alleged defective parts to the Company carriage paid.

- 11.9 The above guarantee is only valid when all conditions, as laid down by the manufacturer's guarantee or service provider of any said goods, have been fulfilled.

## 12. GENERAL

- 12.1 This contract represents the entire agreement between the Company and the Customer and shall govern all future contractual relationships between The Company and the Customer.
- 12.2 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of the Company. No agreement, whether consensual or unilateral or bilateral, purporting or obligate the Company to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of the Company.
- 12.3 No relaxation or indulgence with the Company may grant the Customer shall prejudice or be deemed to be a waiver of any the Company rights in terms of these terms and conditions.
- 12.4 The Customer shall not cede its rights nor assign its obligations under these terms and conditions. A change in the control of the management, whether through a change of the majority shareholding/membership or otherwise, shall be deemed to be a cession.
- 12.5 The Company shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this terms and conditions to any third party without prior notice to the Customer.
- 12.6 The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this contract.
- 12.7 Each of the terms herein shall be a separate and divisible terms and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.
- 12.8 The Customer chooses the address appearing on the quotation as its domicilium citandi ET executandi for all purposes arising here from including the service of Court processes.
- 12.9 The Customer agrees to pay costs on the attorney and own client scale in respect of any costs order that may be granted against it in proceedings by the Company.
- 12.10 Goods are manufactured for standard commercial use, and are not intended for use in critical safety systems or nuclear facilities.

## 13. CONSUMER PROTECTION ACT 68 OF 2008

- 13.1 The Customer specifically acknowledges, confirms and warrants that, due to the nature of the goods sold, the Customer has made itself acquainted with all aspects of the goods, not restricted to but including the dimensions, weight, nature, capacity, output, specifications, operation, installation requirements, servicing requirements, noise emissions, electrical capacity, connection requirements and operational requirements. The Customer warrants that the goods purchased are specifically suitable for the purposes they are purchased.
- 13.2 Transport or removal from the Company's premises shall be at the Customer's cost.
- 13.3 The Customer warrants that all specifications, requirements and information provided to the Company in respect of any request to supply the goods was true, accurate, complete and provided all material facts, and acknowledges that the Company shall not accept the return of the goods in the event of any breach of this warranty.
- 13.4 The Customer acknowledges that, prior to delivery of the goods sold, it shall be afforded an opportunity to properly examine and evaluate the goods; and hereby waives all rights in the event that proper examination and evaluation of the goods has not been made, has been declined, or has been waived or ignored by the Customer, its representative or its agent, who accepts delivery of the goods by or on behalf of the Customer.
- 13.5 Subject to clause 11, any goods sought to be returned in respect of any alleged defect or fault relating thereto, shall be delivered to the Company's premises at the risk of the Customer. Goods shall be deemed to have been received by the Company by the signature of a Company representative of a document evidencing the receipt of such.
- 13.6 The company reserves the right as per section 20 of the Consumer Protection Act to charge a handling fee on returned goods not greater than 20% of the value of the goods. Due to the nature of the goods, this handling fee is used to offset the wear and tear and degradation of the goods whilst in the customer's possession. This handling fee will be at the discretion of the company.

SIGNED ON BEHALF OF THE CUSTOMER, WHOSE AUTHORITY IS SOLEMNLY CONFIRMED

AT (PLACE): \_\_\_\_\_

ON (DATE): \_\_\_\_\_

NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

PLEASE SIGN AND RETURN THE TERMS AND CONDITIONS.