

Dieselec Thistle Generators Ltd

Terms and Conditions for Sales of Products and Services

1. OFFER AND DEFINITIONS. Dieselec Thistle Generators Ltd ("Seller") offers to provide to its valued customer ("Buyer") one or more of the following defined goods and/or services, as specified in Seller's price quotation and/or proposal document ("Offer"), which accompanies and/or references these Terms and Conditions:

"Refurbished Equipment" means refurbished generator sets and related ancillary equipment. **"Engineered Products"** means generator set modification and/or uprate/upgrade kits or subassemblies.

"Parts" mean Certified Service parts or other parts for resale.

"Field Services" means field service labour, including without limitation all inspection, maintenance, emergency call-outs, troubleshooting, commissioning/installation of Products and all service calls associated with service agreements and any other contract activity. The term Field Services does not include Products provided while performing Field Services.

"Documentation" means technical documentation, programs, manuals and the like.

"Training" means technical training services.

"Repair" means major component repair work to correct a specific, identifiable problem. Buyer's assembly is disassembled as far as necessary to repair or replace discrepant parts and/or correct a malfunction. Inspection, tolerance specifications, part repair/replace decisions and testing are per Buyer specification.

"Products" as used herein refers to the generator sets and the parts, assemblies, components and materials associated with such generators sets provided by Seller in fulfilling the Order, including Seller's labour and services incorporated therein, excluding, however, all Field Services and Training.

2. ACCEPTANCE, ORDER AND ENTIRE AGREEMENT

2.1 Acceptance and Order. Unless otherwise specifically stated in the Offer, these Terms and Conditions establish the rights and obligations of the Seller and Buyer which apply to the Offer and any resulting Buyer's order document ("Buyer's Purchase Order"). The issuance of Buyer's Purchase Order against the Offer, shall constitute an acceptance of the Offer and not a counteroffer, and together with these Terms and Conditions shall create a contract of sale ("Order"). Buyer's acceptance of the Offer is expressly limited to the terms and conditions of the Offer and these Terms and Conditions and is subject to Seller's final credit approval of Buyer. Any provision contained in Buyer's Purchase Order that alters the provisions of the Offer and/or these Terms and Conditions shall not be part of the Order unless specifically agreed to in Seller's acknowledgment. In the event of any conflict between these Terms and Conditions and the Offer, the Offer shall control.

2.2 Entire Agreement. The Order shall constitute the entire agreement between the parties defining the scope and the manner in which the Order will be performed, and all prior written and oral agreements and undertakings regarding the Products are superseded by the Order. Neither Buyer nor Seller shall be deemed to have made any representations or warranties, express or implied, regarding the Products or Field Services except as specifically set forth in the Order.

3. PRICES AND PAYMENT

3.1 Prices. Unless otherwise stated in the Offer, all prices are valid for a period of sixty (60) days from the date of the Offer. Prices do not include any taxes, duties or fees of any kind. At Seller's discretion, Buyer shall pay such taxes, duties or fees directly to Seller, or Buyer shall provide Seller with satisfactory evidence of Buyer's payment thereof or valid exemption certificates; however, Seller shall have no obligation to ensure that Buyer has paid all necessary taxes, duties or fees. All prices unless specifically stated otherwise are based on delivery "Ex Works" (as defined in Incoterms 2000) Seller's facility and do not include any charges for special services such as long term preservation, special packaging, insurance, shipping, brokerage fees, marine survey, load out and tie down, site installation, equipment start-up, or similar services. For Buyer's convenience, Seller will load the Buyer's supplied truck at Seller's facility.

Buyer warrants that the Products are purchased for installation and use at the location identified in the Order and will be shipped to that location. Buyer shall instruct Seller to release the Products only to a carrier, customs broker or forwarding agent for shipment to the location stated in the Order.

3.2 Payment. Seller's invoice(s) shall be issued in accordance with the Offer, or if not set forth therein, then as to Products upon shipment from Seller's facility and as to Field Services and Training, upon completion. Invoices shall be due and payable NET thirty (30) days from the date of invoice unless specifically stated otherwise in the Offer without regard to inspection or transportation delays. Past due invoices shall be subject to interest at the lower of the maximum lawful rate or one percent (1%) per month. Any collection costs are to the account of Buyer. If any part of an invoice is genuinely in dispute, the Buyer shall pay the undisputed part thereof. The Buyer and Seller shall endeavour to resolve the disputed part without delay.

Buyer and Seller may establish an open credit line. For Orders which exceed such credit line or where credit is not in place, Buyer will provide Seller an irrevocable letter of credit negotiable at sight, drawn on a bank acceptable to Seller. Buyer's failure to pay invoices when due, or Buyer's failure to present

Seller with an acceptable letter of credit upon request shall be deemed to be a material default by Buyer, and Seller may elect to (a) discontinue performance of the Order, and/or (b) terminate the Order (in which case cancellation fees determined in accordance with Article 9 shall be due Seller) and/or (c) pursue any other remedy available to Seller.

Seller retains title in all and any Products identified to or delivered under the Order or any other previous or subsequent Orders, until payment of the total Order price or any such sums due to the Seller by the Buyer in any manner whatsoever, and under any such contract or contracts or previous or subsequent Orders between the Parties, is received in full.

Until such time as title in the Products passes to the Buyer, the Buyer shall hold the Products in trust for the Seller or as the Seller's fiduciary agent and bailee, as the case may be, and shall keep the

Products separate from other goods, properly stored, protected and insured as Seller's property. Until such time as title of the Products passes to the Buyer, the Seller will require to hand over the Products to the Seller, within 48 hours of written notice by the Seller to the Buyer. If the Buyer fails to do so, the Seller may forthwith enter the premises where the Products are stored and repossess the Products without any liability arising in any manner whatsoever, and with the consent of the Buyer, as evidenced by their acceptance of these Terms and Conditions or by the acceptance of the Products.

The Seller warrants that its transfer of ownership, upon payment in full of any and all sums outstanding between the parties is rightful and free from any lien or encumbrance of third parties.

4. DELIVERY. Risk of loss to the Products shall pass to Buyer upon Seller's delivery of the Products Ex Works Seller's facility. Freight or shipping obligations that are inconsistent with the delivery term "Ex Works" shall have no bearing on the passage of title or risk of loss.

Unless otherwise stated in the Order, Buyer is responsible for delivery of the Products and Buyer's equipment/assemblies upon which services will be performed, to Seller's facilities as well for the collection and shipment therefrom. Seller will perform the Order as contracted for and notify the Buyer or Buyer's agent when ready for shipment.

. All parts or items removed and replaced by Seller during Repair or Field Service and/or Refurbished Equipment service become the property of Seller unless otherwise specified in advance in writing. If

Buyer so specifies, any associated costs are to Buyer's account.

. Buyer will notify Seller at time of Order placement if transportation will be via air, surface or sea.

Seller's packing for shipping purposes will be appropriate for the type of transportation to be utilized. Any claims against Seller for damages or shortages must be filed with Seller within thirty (30) days after receipt of Products or shipper's notice of loss, whichever shall occur first, and must be accompanied by Seller's shipping documentation and full particulars of any such claim.

5. RESPONSIBILITY FOR EXPORT. Buyer assumes full responsibility for all applicable laws relating to the exportation and importation of the Products. The Products shall not be exported or transhipped contrary to the laws of the United Kingdom. Seller shall comply with reasonable requests for information about the Products which may assist with their exportation, transshipment or importation. If Buyer exports the Products, all rights to drawbacks of custom duties paid by Seller with respect to the Products (or material or components thereof) belong to and shall remain with Seller unless such drawbacks were included in the Order price paid by the Buyer, in which event Seller shall assign such drawbacks to the Buyer.

6. WARRANTY

6.1 Warranty. Seller warrants the Products to be free from defects in workmanship and materials rendered or used by Seller in the performance of the Order. Seller warrants that the Field Services provided by Seller under the Order will be performed in a workmanlike manner. These warranties are subject to Article 6.3 and shall apply only to claims made during the applicable warranty period as determined in accordance with Article 6.2.

6.2 Period of Warranty. The applicable warranty periods are as follows, for:

i. Products installed for stand-by generation: The warranty shall be for twelve (12) months from the date of shipment from Seller's facility.

ii. All other Products: The warranty period shall be for twelve (12) months from the date of shipment from Seller's facility.

iii. Repair: Parts replaced, and work performed is warranted for a warranty period of six (6) months from the date of shipment from Seller's facility.

iv. Field Services: The warranty period is thirty (30) days from the date the applicable Field Services were furnished.

6.3 Terms of Warranty. For Products, Seller's obligation under this warranty is expressly limited to repair or replacement, as Seller elects, of any defective portion of the Products free of charge (excluding freight and labour costs to remove and replace) at Seller's repair centre, provided:

i. All Products are installed and used in accordance with Seller's recommended practices;

ii. Any failed Products are returned to Seller's repair centre in accordance with Seller's standard claim instructions, transportation charges prepaid;

iii. Seller's examination of any failed Products confirms the existence of a warranted defect; and

iv. Any claim under this warranty is made within thirty (30) days of discovery of the defect and, in any event, before the expiration of the applicable warranty period.

This warranty shall not apply to: (a) normal maintenance, service, adjustments; or consumables (b) the removal or reinstallation of any warranted Products; (c) any Products or parts of Products which have been repaired or altered unless such repair or alteration authorised by Seller in writing; (d) any damage caused by the effects of corrosion, erosion, or wear and tear or failure occasioned by operation or any condition of service that more severe than specified by Seller; (e) Product operated in excess of specific hours limitations.

All claims for defective Field Services under this warranty must be made in writing immediately upon discovery but in any event within thirty (30) days from the furnishing thereof. Upon submission and substantiation of a claim, Seller shall, at its option, either: (a) correct the defective services; or (b) refund an equitable portion of the price of the Field Service.

Training and Documentation are provided without warranty or recourse and on an as is basis.

Excepting only warranty of title, the foregoing is expressly in lieu of all other warranties, representations and liabilities whatsoever whether expressed or implied under statute or common law, including without limitation, the implied warranties of saleable quality and fitness for a particular purpose.



7. SUSPENSION OF ORDER OR DELAY IN DELIVERY. Buyer's request for a suspension of any Order or for a delay in delivery or performance is subject to Seller's written agreement and scheduling constraints. Such suspensions or delays may result in adjustments to prices, payments and delivery schedules. If a suspension is more than sixty (60) days in duration, Buyer agrees to pay Seller within ten (10) days of an invoice therefore, pro rata, for the portion of the Order completed. In the event that

Seller's performance has proceeded to the point that Seller deems it cannot reasonably reschedule completion, or the request for suspension is received less than sixty (60) days prior to scheduled delivery or completion of performance, the Order shall be completed, invoiced, and the Products placed in storage at Buyer's expense. Risk of loss to the Products shall transfer to Buyer, and Seller shall retain title therein until payment of the total Order price is received.

8. FIELD SERVICES AND OTHER ON SITE ACTIVITY. The following shall apply to Field Services or when the Order calls for any on-site activity by Seller:

8.1 Buyer Assistance. Buyer shall provide free of charge such assistance as Seller may reasonably require to facilitate timely completion of the Order or any portion thereof. If Seller is unable to perform through no fault of its own or as a result of Buyer's failure to cooperate or provide assistance to Seller, Seller shall be excused from performance. In such event, Seller may, at its option, terminate the Order or continue to perform to the extent possible, and shall be entitled to an equitable adjustment in the Order price and/or schedule. Buyer assistance shall include, but shall not be limited to, the following:

- i. Buyer shall provide reasonable security and protection for all persons, property and equipment employed or used by Seller in the performance of the Order.
- ii. Buyer shall make available to Seller free of charge the use of any required tooling, training and test equipment as may be customary for Buyer to supply in performance of the Order, and any required transport, lifting equipment and utilities, including without limitation electrical power, compressed air and water.
- iii. Buyer shall assist Seller in obtaining access to roads, staging areas, dock space, loading or unloading facilities, plant or production or training facilities and the like that are reasonably necessary or helpful for the performance of the Order.
- iv. Buyer shall provide Seller with fuels and lubricants in sufficient quantity and quality to meet the requirements of the Order.
- v. Buyer shall assist Seller in obtaining any necessary permits, licenses, or authorizations required to complete the Order.
- vi. In the event Seller's employees, subcontractors, agents, or other representatives are to perform any portion of the Order at a remote site or in offshore waters, as determined by Seller, Buyer shall provide: (a) transportation for such persons from an agreed staging point to and from the site; (b) messing, housing, sanitation facilities, and emergency medical care; and (c) transportation and special handling equipment necessary to move Seller's goods, tools, and equipment from an agreed staging point to and from the site.
- vii. Where necessary, Buyer shall provide assistance to facilitate entry into, movement within or exit from any country where performance is to be rendered including: (a) assistance to

Seller's employees, subcontractors, agents, or other representatives to obtain necessary residence and work permits; and (b) obtaining import or export documents and clearances for Seller's tooling and test equipment, required to complete the Order.

viii. Buyer shall be responsible for the payment of any applicable non-UK income taxes and other fees, duties, or taxes associated with Seller's performance of the Order.

8.2 Buyer's Acknowledgment. With respect to all field services, Buyer acknowledges that Seller in rendering any field services does so under the instructions of the Buyer and that Buyer is, at all times, in complete care, custody and control of all machinery, equipment and adjacent premises.

9. TERMINATION OR CANCELLATION

9.1 Products. In the event of a termination or cancellation by Buyer of an Order for Products other than Parts, Buyer shall immediately pay to Seller the cost of any items purchased by Seller to meet

Buyer's specification that are not part of Seller's standard product offering. In addition, Buyer shall immediately pay the cancellation charges set forth in the chart below ("Cancellation Charges"):

Calendar Days: Cancellation Charges as a Straight Line % of Order:

From	To	
Order	30 ARO	10-20 %
31 ARO	60 ARO	20-40 %
61 ARO	61 BSD	40-70 %
60 BSD	DELIVERY	100%

ARO = After Receipt of Order BSD = Before Scheduled Delivery

Except where Cancellation Charges are designated as one hundred (100%) percent of the Order, title to all such Products in whatever stage of completion shall remain with Seller. The payment of such charges shall not prejudice or affect a waiver of Seller's rights to any other remedy.

9.2 Parts. An Order for Parts may be cancelled at no charge at any time prior to shipment providing the Order is for Parts that Seller normally maintains in inventory. Should the Buyer terminate or cancel an Order for any Part that is not normally stocked by Seller, and the Part was specifically ordered or manufactured for the Buyer's requirements, the Buyer will pay to Seller an amount based upon the Order price multiplied by Seller's determination of the percentage of completion at time of cancellation. Except where cancellation charges are designated as one hundred (100%) percent of the Order, the foregoing assumes title to all Parts, at whatever stage of completion, shall be and remain with Seller.

9.3 Field Services. An Order for Field Services or Repair may be cancelled by Buyer up to 24 hours prior to the start of work without charge. Orders cancelled less than 24 hours prior to the start of work shall be subject to Cancellation Charges based on Seller's determination of the value of the time, materials and associated expenses incurred in performance of the Order plus the price for any specially procured or fabricated items not typically stocked by Seller. Products actually installed in Buyer's equipment and/or parts not returnable to Seller's inventory for sale to third parties shall be charged to Buyer's account at the applicable Order price.

9.4 Training. There shall be no cancellation charge if notice of cancellation is received by Seller at least thirty (30) days before the scheduled training ("BST") for standard courses (on-site or open house) and at least ninety (90) days BST for customized courses. If less than thirty (30) days' notice BST is given for standard courses, the cancellation charge (as a percentage of the Order price for Training) shall be 50% for standard open-house courses and 100% for standard on-site courses. If less than ninety (90) days' notice BST is given for customized courses the cancellation charge (as a percentage of the Order price for Training) shall be 33% for notice received 61-89 days BST, 66% for notice received 30-60 days BST, and 100% for notice received less than 30 days BST. Except where cancellation charges are designated as 100 percent of the Order, the foregoing assumes all Training materials are retained by Seller.

10. RIGHTS TO DRAWINGS AND DATA/INTELLECTUAL PROPERTY. Seller may, in the course of its performance of the Order, disclose technical information, Training, Documentation, drawings, computer programs, computer data files and the like (collectively, "Information") to Buyer. All such Information is confidential or proprietary and Buyer agrees: (a) to hold such Information in confidence and not to disclose it to third parties; (b) not to use the Information for any purpose other than that for which it was provided; (c) not to copy the Information (additional copies may be purchased); (d) to protect the Information from unauthorized access, use and disclosure allowing only those of Buyer's employees who have a need to know the Information access thereto. Buyer understands and agrees that upon termination of the

Order, Seller may terminate Buyer's right to use the Information and require the destruction of, or require the return of the Information and other materials (including translations) embodying the Information.

Engineering designs, data, and other such information specifically prepared for Buyer and identified under the Order are provided to Buyer pursuant to a nonexclusive, paid up, perpetual license for use only with the Products. Such license rights shall be deemed transferred fully to successors who acquire the Products, at which time the Buyer's license will expire.

11. TESTS/INSPECTIONS. Seller's normal tests and inspections of the Products, and any special tests expressly set forth in the Order are open to Buyer's observation and in a manner agreeable to Seller, subject to Seller's standard security procedures. Special tests and inspections that are outside the scope of the Order may be requested by Buyer in writing and may be arranged, subject to Seller's reasonable discretion and scheduling constraints. In such cases, Seller shall add a reasonable adjustment to the Order price which reflects the added price for such special tests and inspections.

12. INSURANCE. Seller shall provide, pay for, and maintain in full force and effect during all periods of performance of the underlying Order, its "standard insurance" consisting of, EMPLOYER'S LIABILITY (in the amount of £10,000,000) PUBLIC/PRODUCTS LIABILITY (in the amount of £5,000,000), and ERECTION ALL RISK (in the amount of £3,500,000).

13. MISCELLANEOUS.

13.1 Independent Contractor. At all times while performing the Order, Seller shall be deemed to be an INDEPENDENT CONTRACTOR and not an employee or agent of Buyer. Buyer's employees, agents, or subcontractors assigned to assist Seller or who attend Seller's Training classes may receive temporary instructions or technical directions or the like from Seller, but shall at all times be considered the employees, agents, or subcontractors of Buyer and not of Seller.

13.2 Limit of Liability. Neither Buyer nor Seller or their affiliates, subcontractors, agents and/or employees shall be liable for any incidental or consequential damages, including without limitation, loss of products, loss of profit (other than amounts due under the Order), loss of use, losses resulting from or related to downtime of the Products, Field Services or Training or the cost of replacement power, howsoever caused, and whether based on warranty, contract, tort (including negligence), strict liability or otherwise. The liability of Seller, its affiliates, subcontractors, agents and employees arising out of the performance or non-performance of its obligations in providing Products and/or the rendition of Field Services or Training in connection with this Order, whether based on warranty, contract, tort, (including negligence), strict liability or otherwise, unless formally agreed alternatively, shall be excluded from Seller's offer. The limitations of liability set forth in this Article 13.2 shall prevail over any conflicting or inconsistent provisions contained in any documents comprising the Order. Nothing herein, however is intended to limit the liability of Seller for death or personal injury caused by Seller's negligence.

13.3 Force Majeure. Seller shall not be liable for any delay in performance, any non-performance, or any other deviation in performance of Seller's obligations, nor for any loss or damage to the Products supplied hereunder, when occasioned directly or indirectly by any cause or causes beyond the reasonable control of Seller or its subcontractors or suppliers, including, but not limited to, acts of God; acts of criminals or public enemy; war; riot; official or unofficial acts, orders, regulations or restrictions of any foreign or domestic government or agency thereof; acts of Buyer or its employees or representatives; strikes or labour difficulties involving employees of Seller or any other party; failure, shortage or delay in Seller's usual sources of labour or material supply. Seller shall have a reasonable extension of the time for performance when delayed by any such cause.

13.4 Assignment and Modifications. Seller shall have the right to assign any rights or obligations under the Order to any of its affiliated or subsidiary companies. Any assignment of Buyer's rights or obligations under the Order requires Seller's prior written consent. Any variations to the Offer requested by Buyer and performed or provided by Seller shall be paid for by Buyer at a price equal to the greater of Seller's cost to provide such plus five percent (5%) or such other price quoted by Seller. Any other modifications or changes to the Order must be in writing, signed by Buyer and Seller.



13.5 Disputes/Applicable Law. Buyer and Seller shall use their reasonable efforts to resolve any dispute or claim which may arise under the Order in an amicable manner. In the event Seller is in breach of or noncompliance with any of the provisions of the Order, Buyer shall notify Seller in writing and Seller shall take reasonable measures to remedy such breach or noncompliance within thirty (30) days after receipt of notice. Any dispute or claim arising out of or in relation to the Order which is not settled by agreement of the parties shall be submitted to arbitration, and judgment upon the arbitral award may be entered in any court having jurisdiction. The request for arbitration shall be made within a reasonable time after the dispute or claim arises, and in no event after it would be barred by the applicable statute of limitations. The cost of such arbitration shall be borne as determined by the arbitrator(s). Unless otherwise mutually agreed, arbitration hearings shall be held in Scotland. Should any provision of

the Order be declared invalid, such declaration shall not invalidate or void the remaining provisions of the Order. Any contract established by the acceptance of this offer will be subject to Scottish Law and the jurisdiction of the Scottish Courts.

13.6 Third Parties. The Order shall not create or give rise to and is not intended to create or give rise to, any third party rights except to the extent expressly stated herein. The appreciation of any legislation, including but not limited to the Contracts (Rights of Third Parties) Act 1999 giving to or conferring on third parties any contractual or other rights in connection with the Order shall be excluded.

13.7 Insolvency. Seller may cancel the Order in whole or in part or suspend the delivery of Products or the performance of Field Services or Training without any liability to Buyer forthwith if (a) Buyer makes any voluntary arrangement with its creditors or becomes subject

to an administration order or becomes bankrupt or goes into liquidation or a receiver is appointed over any of the property or assets of Buyer; or (b) 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 (c) Seller has reasonable grounds for believing that any of these events is about to occur in relation to the Buyer. The above shall be in addition to any other rights of Seller in such circumstances, such rights including but not limited to retention of title. If Products/Parts have been delivered or Field Services or Training performed, but not paid for then the price shall be immediately due and payable notwithstanding any previous arrangement to the contrary.