



## **New Way (Pty) Ltd Standard Terms and Conditions**

### **1. Definitions**

For the purposes of these terms and conditions, unless the context indicates otherwise, the words and expressions set out below shall have the meanings assigned to them and cognate expressions shall have a corresponding meaning namely:

“Agreement” – the agreement between the Customer and New Way which arises from a Purchase Order accepted by New Way and to which these Conditions shall form an integral part and be incorporated by reference;

“Business Day”- any day other than a Saturday, Sunday, or public holiday in the RSA, within the meaning of the Public Holidays Act, 1994.

“Conditions”- these standard terms and conditions of sale;

“Customer”- the party who has delivered a Purchase Order to New Way and whose details are reflected on such Purchase Order or the relevant customer application;

“New Way”- New Way Power (PTY) Ltd, Reg No. 1983/003012/07, a private company with limited liability incorporated under the laws of the RSA;

“Products”- the generators, engines, alternators, spare parts and/or other goods and/or products supplied by New Way to the Customer in terms of the Agreement;

“Purchase Order”- a purchase order delivered by the Customer to New Way for the supply of Products and/or Services pursuant to a written quotation prepared by New Way;

“RSA”- the Republic of South Africa comprising the nine provinces identified in section 103 of the Constitution of the Republic of South Africa, 1996; and

“Services”- any maintenance, installation or other work or services provided or rendered by New Way to the Customer in terms of the Agreement.

### **2. Purchase Orders**

- i. These Conditions govern all contracts and sub-contracts entered into by New Way for the sale of any Products and/or the rendering of any Services and are an integral part of any Purchase Order. Accordingly, any conditions stipulated by the Customer which are in conflict with these Conditions or not expressly incorporated in an accepted Purchase Order are expressly excluded, unless otherwise agreed in writing by the parties.
- ii. Any Agreement shall only become binding and into force upon New Way notifying the Customer of its acceptance of a Purchase Order in writing.
- iii. Any quotation given by New Way shall only be valid for a period of 30 calendar days from the date of delivery thereof to the Customer, whereafter it shall lapse automatically.
- iv. All Purchase Orders shall remain open for acceptance by New Way for a period of 15 Business Days, failing which it may thereafter be cancelled in writing by the Customer.
- v. It is recorded that New Way may at any time discontinue, without any obligation or Liability to the Customer, the sale of any Products or lines thereof. New Way will have



no obligation, under any circumstances, to accept orders for any Products which are not in its current inventory.

- vi. New Way shall not be obliged to accept any variations, modifications, alterations, or additions to any Purchase Order if such variations, modifications, alterations, or additions are requested after the date of acceptance of the Purchase Order by New Way in terms of this clause 2. No variations, modifications, alterations, or additions to any Purchase Order shall be of any force or effect unless agreed to in writing by New Way.

### **3. Sale and Payment**

- i. All orders for Products and/or Services shall be evidenced by a written Purchase Order delivered by the Customer to New Way. No order for Products and/or Services shall be binding on New Way unless. And until, it has been accepted in writing by an authorised representative of New Way and delivered to the Customer.
- ii. The prices charged to the Customer for Products purchased or Services rendered here under shall be the prices indicated on the written quotation prepared by New Way, provided such quotation was still valid at the time of receipt by New Way of the Purchase Order from the Customer. It is recorded that certain components of the Products may be imported by New Way and the quoted prices for such Products may accordingly be adjusted by New Way by written notice to the Customer as a result of exchange rate fluctuations, provided that once a Purchase Order has been accepted by New Way, such prices may only be adjusted by New Way by written notice to the Customer to the extent that the relevant Purchase Order made provision for such adjustment or otherwise relies on or reflects an assumed exchange rate.
- iii. The Customer shall be required to pay for all Products and Services in cash in South African Rand by way of electronic transfer to New Way's designated bank account without set-off or deduction either (a) net 30 calendar days of receipt of the statement from New Way (which statement shall be delivered by the end of the month during which the relevant invoice was rendered), in the case of a Customer whose customer account application has been accepted in writing by New Way ("Account Customers") or (b) upon acceptance of the Purchase Order and receipt of an invoice from New Way, in the case of any other Customer ("COD Customers").
- iv. Prices quoted and/or invoiced shall, unless otherwise expressly stated, exclude value added tax payable in accordance with the Value Added Tax Act, 1991. In addition to the price specified in each invoice, the amount of any such value added tax applicable to the supply of the Products and/or Services hereunder shall be paid by the Customer. Any Customer who wishes to be an Account Customer shall be required to submit a duly completed customer account application in the prescribed form, together with the prescribed supporting documentation, to New Way prior to placing a Purchase Order. New Way shall not accept any Purchase Orders from Customers who have indicated that they wish to be Account Customers prior to the acceptance in writing of such customer account application by New Way.
- v. New Way shall not be required to deliver any Products and/or Services ordered by any COD Customer unless and until New Way has received the full price for such Products and/or Services specified in the relevant invoice from such COD Customer.



- vi. If the Customer fails to fulfil the terms of payment of any invoice or if Customer's financial position shall become impaired or unsatisfactory to New Way, New Way reserves the right to change terms of payment and/or defer or discontinue further deliveries, without prejudice to any other lawful remedy, until past due payments are made, and satisfactory assurances of the Customer's credit standing are received by New Way. New Way also reserves the right in the case of any of the foregoing events to cancel the Purchase Order, in which event the Customer shall compensate New Way for any commitment's obligations, expenditure, expenses, and costs New Way may have incurred in connection with the Purchase Order.
- vii. New Way may charge the Customer storage and fees at 1% per month on any past due payments from the due date until fully paid or collected, together with all costs and expenses of collection, including legal fees on an attorney and own client scale. Interest shall be charged at the current Prime lending rate as quoted by Standard Bank of South Africa Limited plus 3% per annum on overdue amount from the due date until the date of payment, inclusive, capitalised monthly in advance and the whole amount shall form the principal debt and shall bear interest as aforesaid.

#### **4. Delivery, Risk and Ownership**

- i. Unless expressly stated otherwise, prices are quoted either Ex Works (Incoterms 2010) at the named branch of New Way, in which case transportation from New Way's premises to the Customer's premises shall be the Customer's responsibility and for its account or Delivered at Place (Incoterms 2010) at the Customer's premises specified in the Purchase Order, in which case New Way shall arrange transportation to such Customer's premises.
- ii. Unless expressly requested by the Customer and agreed to by New Way, prices shall exclude the installation and/or commissioning of the Products at the Customer's premises, which installation and/or commission shall be the Customer's responsibility and for its account. New Way shall not be liable for any damage, loss, cost, or expense arising from or otherwise attributable to any installation and/or commissioning undertaken by either the Customer itself or any other third party.
- iii. If a Customer fails to collect any Products from New Way's Premises within 7 Business Days from the date on which New Way notified the Customer that such Products are available for collection, New Way shall be entitled to charge the Customer reasonable storage and handling fees until the date of collection. Notwithstanding anything to the contrary in this clause, should the Customer fail to take delivery within a reasonable time after New Way has by notice in writing requested the Customer to do so, New Way shall be entitled to terminate the Agreement and recover from the Customer any loss suffered by reason of such failure.
- iv. All estimates as to delivery dates are based upon conditions prevailing at the date of quotation. In the event that there are any delays in this regard as a result of circumstances outside the reasonable control of New Way, New Way shall not be liable therefore and the Customer agrees to collect the Products when available and/or accept deliveries when made.
- v. Unless otherwise agreed to in writing between the parties, risk of loss of or damage to the Products shall transfer to the Customer upon delivery, which shall be effected either on an Ex Works (Incoterms 2010) basis at the named branch of New Way or Delivered at place (Incoterms 2010) at the Customer's premises, as shall be stipulated by the parties in the Purchase Order, provided that the Products shall be deemed to have been delivered to the



Customer for purposes of this clause 4(v) if (a) New Way has notified the Customer that the Products are available for collection and the Customer fails to collect such Products from New Way's premises within 7 Business Days or (b) New Way has attempted to deliver the Products at the Customer's premises and the Customer has failed to accept or otherwise take such delivery, as the case may be. Upon such delivery or deemed delivery, New Way shall be entitled to render an invoice to the Customer for Purposes of clause 3 (iii) (a).

- vi. Ownership in the Products shall remain vested in New Way until, and shall only transfer to the Customer upon, receipt by New Way of the relevant purchase price in full. New Way shall be entitled to repossess any Products from the Customer's premises or elsewhere if the Customer fails to fulfil the terms of payment of any invoice. The Customer shall not, without the prior written consent of New Way, be entitled to sell, dispose of or in any manner encumber any Products until full payment thereof and shall notify third parties of New Way's rights in the Products.
- vii. New Way may make partial shipments against the Purchase Order to the Customer. Payment of each invoice, whether or not such an invoice covers the entire Purchase Order, shall be made in accordance with the terms of payment which are effective on the actual date of invoice.
- viii. No claim for shortages in delivery or damages in transit shall be entertained by New Way unless New Way receives written notice of such shortages or damages from the Customer within 5 Business Days after delivery or, in the event of non-delivery, within 5 Business Days of presentation of invoices to the Customer by New Way. Where the quoted price for the Products is stated to include delivery, New Way shall, as its option, repair or replace free of charge Products damaged in transit to the point of delivery only, provided that New Way receives written Notification of such damage from the Customer within the time Periods stipulated in this subclause, whichever is applicable.

## 5. Warranties

- i. The Customer acknowledges that it does not rely on any warranties or representations made by New Way in respect of the Products and Services or any of their qualities, other than those contained in the Agreement.
- ii. New Way warrants to the Customer, in the case of generators, engines and alternators, that such Products shall substantially comply with the specifications set out in the accepted Purchase Order and product manual provided to the Customer and shall be free from defective workmanship or materials (fair wear and tear expected) for a period of 1 year or 2000 operating hours, whichever comes earlier ("the Warranty"). Save for the Warranty, New Way does not represent or warrant that the Products are fit or suitable for any particular purpose, free from any defects or any qualities and expressly disclaims any such warranties or representations, whether express or implied, to the extent permissible by applicable law.
- iii. The Warranty shall be invalidated and the Customer shall not be entitled to claim thereunder if (a) the Products were installed or serviced by any person who is not qualified and approved technician, (b) the Products have been altered or tampered with in any manner or any non-original equipment manufacturer (OEM) spare or replacement parts were used with the Products, (c) in the case where the Customer has engaged New Way



to service or maintain the Products pursuant to a service level agreement, any person, other than New Way, has been allowed by the Customer to service, maintain or repair the Products or (d) the Products were used or operated in any manner contrary to the specifications or the product manual provided by New Way to the Customer or in any other improper manner.

- iv. Any claim under the Warranty must be made in writing and within 5 Business Days from the date on which the alleged defect or malfunction occurred and be supported by the original delivery note, upon receipt of such notice from a Customer, New Way shall have a period of 10 Business Days during which to examine and test the Products to confirm whether the requirements for a claim under the Warranty have been met.
- v. Should it be determined that the Customer is entitled to claim under the Warranty, New Way sole liability towards the Customer shall be to repair or replace any Products which do not substantially conform with the agreed specifications or otherwise contain defective workmanship or materials within a period of 30 Business Days from the date on which it was so determined that the Customer has a valid claim and the Customer shall not be entitled to claim any refund of the purchase price or other form of compensation under the Warranty.
- vi. Any storage handling and/or transportation costs incurred by New Way for Products in respect of which a Customer has alleged that it has a claim under the Warranty shall be for the Customer's account, unless and until such claim has been determined to be valid. New Way shall not be liable for any other costs, expenses, or losses, save for the cost of the repair or replacement of the Products, as the case may be, which may be incurred by the Customer in returning the defective Products to New Way in terms of this clause 5. Should the Customer elect to have any other party effect repairs of the Products, it shall forfeit any and all right it might have had in terms of the Agreement to have New Way effect those repairs, and New Way shall accordingly have no further liability to the Customer in relation to those Products.
- vii. Our generators are to be serviced by a NWP technician every 250 hours / annually (whichever comes first), with a 50-hr run-in service on all new units. This preventative maintenance is required to ensure the optimal operation of your investment and the validity of your warranty. To maintain warranties, new equipment must be commissioned by NWP, unless you have purchased a standard base load set. Please contact us for more information on our warranties and its exclusions.

## **6. Miscellaneous**

- i. The Customers shall not be entitled to cancel or rescind any accepted Purchase Order and if it purports to do so, it shall remain liable towards New Way for the full price for the Products and/or Services reflected on the accepted Purchase Order.
- ii. The Customer shall not be entitled to return any Products following delivery, save for spare parts or otherwise under the Warranty. Spare parts may be returned to the New Way and the purchase price thereof, less reasonable storage, handling and transportation charges incurred by New Way, shall be refunded to the Customer, provided that such spare parts are returned within 5 Business Days of their delivery in their unopened and original packaging.
- iii. Repair, maintenance, and other services after sale for the Customer and users of the Products shall be at the cost and responsibility of the Customer, unless expressly agreed otherwise in writing with New Way.
- iv. The Customer agrees to comply with all procedures, steps and instructions specified by New Way in writing from time to time in connection with the use and operation of the Products to ensure that Products are safe and without risks to health when properly used.



The Customer acknowledges that such written instructions may be included in any manual provided by New Way to the Customer from time to time.

- v. New Way shall have a lien over any Products delivered to it for repairs by the Customer for so long as any amounts payable by the Customer to New Way remains outstanding and New Way shall be entitled to sell such Products to settle any such outstanding debt.
- vi. New Way shall not be liable for any damage or loss to any Products stored at New Way's premises, either prior to delivery thereof to the Customer or whilst such Products are being repaired or serviced by New Way, save for any such damage or loss directly attributable to the gross negligence or wilful misconduct.

## **7. Liability**

The Customer indemnifies and holds New Way harmless against any and all loss, damages, costs, expenses, or other liability arising from or in connection with (a) the Customer's use of the Products, other than New Way's liability under the warranty or as a result of any grossly negligent acts or omissions of New Way, (b) any breach of the Customer's obligations under this Agreement and (c) any contravention of any applicable law, regulation, or order of the RSA by the Customer. In no event shall New Way be liable for any indirect, incidental, consequential, special, or punitive damages, including, without limitation, loss of business, revenue, or profits, whether in an action in contract, delict, strict liability, or otherwise. In no event shall New Way's aggregate liability under, arising out of or in connection with any Purchase Order exceed the price paid by the Customer to New Way under such Purchase Order.

## **8. Independent contractor**

In making and performing Purchase Orders and otherwise under this Agreement, each party acts and shall act at all times as an independent contractor, and nothing contained herein shall be construed or implied so as to create the relationship of a partnership, agency, franchise, joint venture, employment, or other similar relationship between New Way and the Customer.

## **9. Insurance**

The Customer shall obtain and maintain in effect, for so long as New Way retains ownership under this Agreement of any Products delivered to the Customer, appropriate insurance policies in respect of damage to or theft of the Products with a reputable insurer providing adequate cover and shall provide New Way with copies thereof upon request.

## **10. Force majeure**

New Way shall not be in breach of the Agreement by reason of any failure or delay in the performance of any obligation under the Agreement where such failure or delay arises out of any cause beyond the reasonable control and without the fault or negligence of New Way. Such causes shall include, without limitation, storms, floods, other acts of nature, fires, explosions, riots, war, or civil disturbance, strikes of labour unrests, embargoes and other governmental actions or



regulations, as well as delays in transportation or an inability to obtain necessary supplies that would prohibit it from furnishing Products or Services or performing any other aspects of its obligations hereunder.

## **11. Termination**

- i. Either party shall be entitled to cancel the Agreement immediately without further notice to the other party if: (a) it has given written notice to the other party that such other party has committed a material breach of the terms of the Agreement in performing its obligations and failed to rectify such breach within a period of 7 calendar days, (b) any order is made or an effective resolution is passed for the winding-up of the other party or if the other party is placed into provisional or final liquidation or if the other party institutes business rescue proceedings or such business rescue proceedings are instituted against the other party pursuant to the provisions of the Companies Act, 2008 or (c) the other party comprises with its creditors, or commits an act which, if that party was an individual, would have constituted an act of insolvency in accordance with the Insolvency Act, 1936.
- ii. Upon termination of the Agreement all indebtedness of the Customer to New Way shall become immediately due and payable without further notice or demand, which is hereby expressly waived, and New Way shall be entitled to reimbursement for any reasonable legal fees that it may incur in collecting or enforcing payment of such obligations.

## **12. Consumer Protection Act**

The Customer undertakes to notify New Way in writing forthwith should it on-sell any Products supplied by New Way to it pursuant to the Agreement to “consumers” (as that term is defined in the Consumer Protection Act, 2008 (“CPA”)). Notwithstanding anything to the contrary in these Conditions, the Customer indemnifies and holds harmless New Way from and against any and all claims, actions, liabilities, damages, costs and expenses (collectively “losses”) asserted against, imposed upon or incurred by New Way (a) as a result of or arising out of the Customer breaching the aforesaid undertaking, or (b) from any harm alleged or proven by a consumer himself, or other person contemplated in section 4 (1) of the CPA, to the extent such harm is attributable to the negligent or intentional conduct of the Customer or any contravention of the Customer of any applicable law, where the Customer is not able to prove that it is not liable for such losses in terms of 61 (4) of the CPA.

## **13. General**

- i. The Agreement contains the entire agreement between the Parties in relation to the subject matter hereof.
- ii. Neither party shall have any claim or right of action arising from any undertaking, representation or warranty not included in the Agreement.
- iii. Any latitude or extension of time which may be allowed by New Way to the Customer shall not under any circumstances whatsoever act as an estoppel or be waiver of New Way’s rights hereunder.



- iv. No alteration or variation to, or consensual cancellation of, the Agreement shall be of any force or effect unless it is recorded in writing and signed by both the parties to this Agreement.
- v. If any clause or term of the Agreement should be invalid, unenforceable, or illegal, then the remaining terms and provisions of the Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of the Agreement.
- vi. The Customer shall not be entitled to cede, delegate, or assign any or all of its rights and/or obligations under this Agreement to any person. New Way shall be entitled to cede, delegate, or assign any or all of its rights and/or obligations under the Agreement to any of its subsidiaries, holding companies or fellow subsidiaries of such holding companies or fellow subsidiaries of such holding company as contemplated in the Companies Act, 2008.
- vii. New Way shall be entitled to set any amounts payable or creditable by New Way to the Customer off against any amounts owed by the Customer to New Way pursuant to this Agreement.
- viii. The Customer agrees that the amount due and payable to New Way from time to time may be evidenced by a certificate issued by any director of New Way, which certificate shall constitute *prima facie* proof of such indebtedness.
- ix. New Way may subcontract, at its expense, any portion of the Services to any subcontractor of its choice.