

## 1. Application of these terms and conditions

- 1.1. These terms and conditions shall apply to all after sales services carried out by Energy Power Systems Australia ("EPSA") in relation to repair, maintenance and other services for power systems owned or operated by the Customer ("Services") as well as EPSA's delivery of spare and replacement parts ("Parts" or "Part").
- 1.2. These terms and conditions shall apply exclusively. Differing or contrary terms of the Customer shall not apply, unless expressly agreed upon.
- 1.3. A contract shall only come into force with EPSA's written order confirmation (titled "Service Order" or "Parts Order") by letter, fax or email, unless the contract is concluded orally through EPSA's Parts & Service phone line(s).

## 2. Customer responsibilities

- 2.1. The Customer must give or procure EPSA access to its site or the relevant work area and the engines or generators as is reasonably necessary for EPSA to supply the Services and / or Parts.
- 2.2. The Customer shall provide to the extent necessary at its own risk and expense assistant staff, and, if so agreed, tools, lifting devices with operating staff as well as all materials and equipment necessary for due performance of EPSA's Services. The Customer is responsible for assistant staff following EPSA's reasonable instructions.
- 2.3. In the event that any of EPSA's materials, tools or devices are damaged or destroyed at the Customer's work-site, the Customer shall be liable for damages to EPSA to the extent to which the Customer is responsible for the loss or damage occurred.
- 2.4. The Customer shall take reasonable care for safety in the workplace and shall consult, communicate and co-ordinate with EPSA's service technicians in respect of hazards and controls relevant to its workplace which may impact on the service technicians planned tasks.
- 2.5. If necessary, the Customer shall procure internal work authorizations, ID cards and the like at its own expense.

## 3. Prices and terms of payment

- 3.1. The rates and prices payable for Services and / or Parts are as specified in the relevant Service Order or Parts Order.
- 3.2. Unless expressly stated otherwise in EPSA's Service Order, Parts Order or other document produced by EPSA, the rates and prices exclude freight, consumables (including grease, oil, coolant, water, diesel), taxes and duties and any other necessary or incidental items, work or services.
- 3.3. Used parts, materials and special services, as well as costs for travelling and accommodation of EPSA's staff may be charged separately in the invoice. If Services are carried out on the basis of a binding cost estimate, reference to such cost estimate in the invoice shall suffice; however, deviations from the cost estimate shall be listed separately.
- 3.4. Any third party (including freight and handling) costs for goods or services incurred by EPSA must be reimbursed by the Customer with an amount for profit and overhead of 30% on costs unless otherwise expressly stated in the relevant Parts Order, Service Order or other document relating to the Parts or Services produced by EPSA.
- 3.5. The Customer must pre-pay EPSA in full, cleared funds for parts, components and Services if the Customer does not have credit with EPSA sufficient to cover the full price, before any collection, delivery or the carrying out of any Services will take place.

- 3.6. If the Customer has sufficient credit with EPSA to cover the full price (that is the Customer has entered into a Credit Agreement with EPSA pursuant to which EPSA has approved a specified credit limit application to the Customer's purchases from EPSA) EPSA may issue an invoice or claim for payment on the last day of each month on account of Services and Parts supplied, or undertaken to be supplied, up to and including that date.
- 3.7. If the Customer disputes the whole or any part of any invoice or claim made by EPSA, the Customer must within 14 days of receiving the invoice or claim, give EPSA notice in writing with reasons and within 28 days after the Customer received an invoice or claim, except to the extent disputed, the Customer must pay and EPSA must receive in full cleared funds the amount invoiced or claimed.
- 3.8. Any invoice or claim issued by EPSA before or after the last day of each month is taken to be issued on the last day of the month in which it is issued and the above payment process applies accordingly,
- 3.9. If the Customer fails to pay EPSA any amount when due EPSA is, without limitation entitled to interest at the rate of 10% per annum above the Reserve Bank of Australia target cash rate in simple interest calculated daily from the time the amount falls due and to the extent and for the duration it remains unpaid.
- 3.10. To the extent that payment is for imported parts or components (not in-stock or local items) or incidental items (including freight, handling, taxes) payment is payable in \$AUD as exchanged from the currency invoiced by the supplier to EPSA at the closing RBA rate on the day of arrival of the parts or components at EPSA.

## 4. Time for performance

- 4.1. EPSA will deliver the Parts to the delivery place specified in the Parts Order, and carry out the Services specified in the Service Order, with due diligence, expedition and without delay.
- 4.2. If no place is specified for the delivery of the Parts, EPSA will notify the Customer promptly when the Parts are ready for collection at EPSA; and the Customer must collect the Parts from the EPSA premises specified in the Parts Order within 3 days of the notice given by EPSA.
- 4.3. If no place for the carrying out of the Services is specified, they will be carried out at a reasonably suitable location as determined by EPSA. If a date for delivery of the Parts or completion of the Services is specified in the Parts Order or Services Order, EPSA will deliver or complete as the case may be by those dates.
- 4.4. If no date for delivery of the Parts is specified, the Customer must collect the Parts within 7 days of EPSA notifying the Customer that they are available for collection. If no date for completion of the Services is specified, EPSA will notify the Customer of a reasonable date for completion and failing a rejection within 7 days, that date will be the date for completion.

## 5. Acceptance and completion

- 5.1. The delivery of any Parts is deemed to have occurred in accordance with these terms and conditions: (a) if the Parts are to be collected from EPSA, when loading of the Parts commences; and (b) if the Parts are to be delivered by EPSA to the Customer, when the Parts arrive at the delivery place.
- 5.2. EPSA will notify the Customer promptly when it considers (acting reasonably) that the Services are complete. The Customer must promptly inspect the Parts on delivery, and the Services on receipt of a notice of completion.
- 5.3. The Customer must notify EPSA of any non-compliance with the contract in writing within fourteen (14) days of delivery or notice of completion. If EPSA does not receive a notice within the time required, the Customer is deemed to have: (a) accepted that the Parts are delivered and comply with the contract; and (b) certified that the Services are completed in accordance with the contract,

and EPSA may claim for, and is entitled to, payment of the Price for the Parts and Services

- 5.4. If EPSA receives a written notice from the Customer that the Parts or Services do not conform with the contract within the time required: (a) for Parts that are not new parts or Services: (i) EPSA must promptly rectify the Parts and Services so that they comply with the contract; and (ii) notify the Customer again when rectified or re-delivered as applicable; and (iii) following such notification, follow the process under this clause 5 again. (b) for Parts that are new parts, the Customer may: (i) reject and return them (at Customer's cost) to EPSA's premises set out in the contract; or (ii) accept them and notify EPSA of a dispute under the contract.
- 5.5. To receive a credit for Parts that are new parts returned under the contract, the relevant part: (a) must be in a good saleable condition (except to the extent that any damage was caused by EPSA), in its original packaging, without an expired shelf life (if applicable) and with the original invoice; and (b) must not be custom made parts, backorders, unstocked parts, used parts, unsealed filters, gaskets, batteries, ball or roller bearings, cups, cones, belts, seals, hoses, opened kits or parts. If these conditions are satisfied, the Customer will be entitled to receive the following credit for the new parts purchased: (a) if the part is returned within twenty-eight (28) days of delivery, the Customer is entitled to receive a credit for the full Price of the parts; (b) if returned after twenty-eight (28) days but on or before forty-two (42) days after delivery, a credit for the full Price less a restocking fee of \$55 or 15% of the Price whichever is the greater; and (c) if the part is returned after forty-two (42) days of delivery, EPSA will determine a reasonable credit and the terms applicable and as a minimum apply the restocking fee.

## 6. Unfeasibility of Services

- 6.1. If Services are not feasible for reasons not attributable to EPSA, any expenses, including wasted expenses, fault diagnostic expenses, shall be borne by the Customer.
- 6.2. This provision particularly applies to the following circumstances: (a) if the alleged fault did not occur during the fault diagnostics, (b) if the Customer fails to meet the agreed service date, (c) if the Customer terminates an order in process, (d) if the Parts required cannot be obtained in due time.

## 7. Time for performance and delay of Services

- 7.1. Time periods specified by EPSA within which Services are to be carried out are based on estimates only and are, therefore, not binding.
- 7.2. The Customer may only demand an agreement on a binding time period for Services if the extent of the works is precisely determined, EPSA is able to provide necessary Parts in time, agreement on the extent of the Customer's duties of cooperation has been achieved and, if necessary, the Customer has obtained permits of competent authorities. The binding period for Services shall commence on the day EPSA and the Customer agree that the aforementioned requirements are met, EPSA has free access to the Customer's site and the Customer has given written clearance for the Services to commence.
- 7.3. If the Customer requires an extension of the Services or additional Services become necessary, the time period shall be extended accordingly. If Services are ready for acceptance within the time period or, if a test run is scheduled, the test run is ready to commence, the time period shall be deemed met. In the event of unforeseen events occurring which are beyond EPSA's reasonable control, the time period shall be extended accordingly.

## 8. Maintenance, repair and overhaul at EPSA's work-site

- 8.1. Any expenses arising from transporting the serviced item for maintenance, repair or overhaul to and off EPSA's or his subcontractor's worksite shall be borne by the Customer.
- 8.2. The risk of transportation shall be borne by the Customer. At the Customer's request and costs, EPSA shall arrange for insurance against damages in transit by reason of theft, breakage, fire and the like.
- 8.3. During Services at EPSA's or his subcontractor's work-site, there shall be no insurance coverage; the Customer shall be responsible to maintain insurance coverage for the serviced item regarding fire, mains water, storms, machine breakage and the like, unless insurance coverage for such risks is expressly requested and paid for by the Customer.
- 8.4. If acceptance of the serviced item is delayed, EPSA shall be entitled to charge the Customer for the storage of the respective item at his or his subcontractor's work-site. EPSA shall be entitled to store the serviced item otherwise. Any storage shall be at the risk and costs of the Customer.

## 9. Delivery of spare or replacement parts with or without installation

- 9.1. The following provisions shall apply to any such delivery of Parts not being subject to a repair or service order with regard to delivery time, delay in delivery, warranties and passing of risk:
- 9.2. The Customer shall be responsible for the correct specification of the Part to be delivered by EPSA. Any advice of EPSA on the suitability of the ordered Part shall not be binding and EPSA's liability to that effect shall be excluded as EPSA accepts orders for delivery of Parts without prior inspection of the machine in which the Part is to be installed.
- 9.3. The parties shall agree on the delivery time. The agreed delivery time shall only be binding for EPSA if all commercial and technical matters have been settled between him and the Customer and the Customer has fulfilled all contractual obligations; otherwise, the delivery time shall be extended accordingly, provided such delay is not attributable to EPSA.
- 9.4. EPSA shall only be obliged to adhere to the agreed delivery time, if EPSA's suppliers deliver the Part in due time. Delivery time shall be deemed met by EPSA when, prior to the expiry of the deadline, the Part has been shipped from EPSA or directly from the pre-supplier to the Customer, or the Customer has been notified that the Part is ready for dispatch.
- 9.5. The risk of loss or damage will pass to the Customer upon dispatch of the Part.

## 10. Warranties

- 10.1. EPSA will carry out and complete the Services with due skill and care, in a proper and workmanlike manner and in accordance with all relevant law.
- 10.2. In relation to Parts supplied by EPSA to which a manufacturer's warranty applies, EPSA will procure the benefit of that warranty for the Customer, which is the sole and exclusive warranty for those Parts.
- 10.3. Unless otherwise provided by a manufacturer's warranty, any warranty by EPSA under this Contract excludes liability for costs in connection with: (a) labour (including overtime labour) other than is reasonable or customary to rectify the defect; (b) the removal or installation of parts and components, unless that removal or installation was a defective Service provided by EPSA; (c) standby, freight, transportation, travel, travel time, packaging and handling, demobilisation and re-mobilisation, commissioning, testing and re-sequencing; and (d) any additional outside of territory charges incurred by EPSA for warranty work that is not done by EPSA.

- 10.4. The Customer must notify EPSA of any event or circumstance which may give rise to a claim in connection with: (a) warranty on Parts supplied or to be supplied under this Contract, by the earlier of: (i) the time expressly required by the manufacturer's warranty if any such time is stipulated; (ii) if there is no such time, within 30 days of the event or circumstance giving rise to the warranty claim; and in any event for all Parts, within 6 months from the date of delivery; and (b) warranty on Services under this Contract, within six (6) months from the date of completion of the Services.
- 10.5. If the Customer fails to so notify, EPSA may in its sole discretion rectify the defect but is otherwise released from liability to do so.
- 10.6. The Customer must send a warranty claim to: Energy Power Systems Australia Pty Ltd 227 Wellington Road, Mulgrave VIC 3170 (or local EPSA branch)
- 10.7. The Customer warrants that any claim by it on warranty is valid and one to which the warranty responds, and to the extent that the Customer makes an invalid warranty claim, the Customer must pay EPSA at its standard rates and prices for any Parts or Services supplied to investigate that claim.

## 11. Risk and title

- 11.1. Risk in connection with any Goods sold or supplied to the Customer passes on delivery occurring in accordance with these terms.
- 11.2. Title, property and ownership in any Parts sold or supplied by EPSA under this Contract passes only on payment of the Price in full, cleared funds, free from any set offs or deductions.
- 11.3. Prior to title passing, EPSA may register a Security Interest under the Personal Property Securities Act 2009 (Cth) (PPSA) in relation to the Parts and any proceeds arising in respect of any dealing in the Parts.
- 11.4. Each party waives its rights to any verification statement and any other notices that may be required or desirable under the PPSA to the extent permitted at law.
- 11.5. Neither party may register, sell, dispose of or otherwise deal in any security interest in the Goods or proceeds from any dealing in the Goods other than as permitted by this clause.

## 12. Supplier's liability and limitation of liability

- 12.1. (Limit and overall cap the) To the extent permitted by law, the liability of EPSA, if any, arising out of or in connection with the supply of Parts or Services under this Contract including in negligence, under any indemnity and any other right of action whatsoever, is limited: (a) in the case of Parts to which an equipment manufacturer's warranty applies, to that warranty; (b) for any other Goods at the option and in the (reasonable) discretion of EPSA: (i) to the replacement of Parts or the supply of equivalent Parts; (ii) to the repair of the Parts; (iii) to the payment of the cost of replacing the Parts or of acquiring equivalent goods; or (iv) to the payment of the cost of having the goods repaired; or (c) in the case of Services at the option and in the (reasonable) discretion of EPSA: (i) to a refund of the amount paid for the Services; (ii) to the supply of the Services again; or (iii) to payment for the cost of having the Services supplied again, and in any event and notwithstanding any other provision of this Contract, to an amount in aggregate up to a limit of 35% of the Price.
- 12.2. (Mutual time limit) Each party must notify the other of any claim whatsoever arising under or in connection with the Contract within 12 months of the earlier of when the party was aware or ought reasonably to have been aware of the basis for the claim, and a failure to do so releases the other party from all liability in connection with the claim and its subject matter.
- 12.3. (Exceptions) The limitations in clauses 13.1 and 13.2 do not apply in relation to a liability by one party to the other party for

the destruction of any property (including third party property), injury, illness, disease or death or breach of intellectual property rights.

- 12.4. (Consequential loss) EPSA shall not be liable to the Customer for any consequential, indirect or incidental loss, loss of profits, lost production, loss of anticipated savings, loss of opportunity, business reputation or damage to goodwill arising from or in connection with its supply of the Parts or Services.
- 12.5. (Insurable losses) Notwithstanding any other provision of this Contract, the total liability of each party to the other arising out of or in connection with any destruction of property (including third party property), death, injury, illness or disease is limited to amounts recoverable, or that should have been recoverable, under insurance policies required by the Contract.

## 13. Applicable law and jurisdiction

- 13.1. The Contract is governed by and will be construed in accordance with the laws of the State in which the EPSA office or depot from which the Parts or Services were ordered, is located.