

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 Pty. Ltd. ABN 80 055 274 514 (“EPSA”) in relation to repair, maintenance and other services relating to 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 to the exclusion of all other terms and conditions of the Customer. unless expressly agreed upon by EPSA.
- 1.3 A contract between the Customer and EPSA to which these terms and conditions apply (“Contract”) shall only come into force when EPSA’s written order confirmation (titled “Service Order” or “Parts Order”) is provided to the Customer 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 for 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 and 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 the due performance of EPSA’s Services. The Customer is responsible for ensuring that its assistant staff follow 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 worksite, the Customer shall be liable for damages to EPSA to the extent to which the Customer is responsible for such damage or destruction.
- 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 for EPSA’s service technicians as necessary 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 The cost of any parts, materials and special services, as well as any costs for travelling and accommodation of EPSA’s staff that are not specified in EPSA’s Service Order, Parts Order or other document produced by EPSA 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 15% on such 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 supplier, 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 dispute the invoice or claim prior to payment being due. The Customer must give EPSA notice in writing of the dispute with reasons and within 30 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 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's premises.

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 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's premises, and the Customer must collect the Parts from EPSA's 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 of that date by the Customer in writing within 7 days of receiving EPSA's notification, 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 the Contract as follows: (a) if the Parts are to be collected from EPSA, when collection of the Parts by or on behalf of the Customer 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 the applicable warranty period. 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 that EPSA may claim payment of the price for the Parts and / or 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, the following provisions will apply:
 - (a) for Parts that are not new parts or for Services EPSA must at its option:
 - (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, EPSA must at its option:
 - (i) provide the customer with a full refund of the amount paid for the parts; or
 - (ii) supply replacement or equivalent parts to the Customer

6 Unfeasibility of Services

- 6.1 If the provision of Services is 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.

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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 agreement by EPSA on a binding time period for provision of 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 from 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 (whichever occurs last).
- 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 for providing the Services 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, EPSA must notify the Customer as soon as possible and must notify the Customer of the expected length of the delay. The time shall be extended accordingly. EPSA must take all reasonable measures to mitigate the length of the delay.

8 Maintenance, repair & overhaul at EPSA's worksite

- 8.1 Any expenses arising from transporting the serviced item for maintenance, repair or overhaul to and from EPSA's or its 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 cost, EPSA shall arrange for insurance against damages in transit including by reason of theft, breakage, or fire.
- 8.3 If acceptance of the serviced item is delayed, EPSA shall be entitled to charge the Customer for the storage of the respective item at its (or at its subcontractor's) work-site. EPSA shall be entitled to store the serviced item for the Customer.

9 Delivery of spare or replacement parts with or without installation

- 9.1 The following provisions shall apply to any 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 will accept 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 it and the Customer and the Customer has fulfilled all applicable 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 relevant Parts in due time. The agreed 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 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 to the Customer.

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 shall be the sole and exclusive warranty for those Parts.
- 10.3 At all times during the supply of Parts or Services under this Contract, EPSA agrees to have:
- (a) Public and product liability insurance for \$20 million for each and every claim; and
 - (b) Professional indemnity insurance for \$5 million for each and every claim.

EPSA must provide the Customer with a certificate of currency evidencing the insurances required by clauses (a) and (b) upon request.

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- 10.4 The Customer must notify EPSA of any event or circumstance which may give rise to a claim in connection with:
- (a) The warranty on Parts supplied or to be supplied under the Contract by the earlier of:
 - (i) The time expressly required by the manufacturer's warranty, if any such time is stipulated; or
 - (ii) If no such time is stipulated, within 30 days of the events or circumstances which gave rise to a claim, and in any event for all Parts and or Services, within 12 months from the date of delivery of the said Parts and or completion of the said 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 to the Customer's local EPSA branch)
- 10.7 The Customer warrants that any warranty 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 Parts 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 to the Customer only on payment of the Price in full, cleared funds, free from any set offs or deductions.
- 11.3 The Customer must not register any security interest in or sell, dispose of or otherwise deal with the Parts sold or supplied by EPSA or the proceeds from any dealing in those Parts other than as permitted by this clause
- ### 12 EPSA's liability and limitation of liability
- 12.1 (Limit and overall cap) Subject to clause 12.3 and to the maximum extent permitted by law, the maximum aggregate liability of EPSA, arising out of or in connection with the supply of Parts or Services under the Contract including in negligence, under any indemnity and under 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 Parts at the option and in the (reasonable) discretion of EPSA:
 - (i) to the replacement of those Parts or the supply of equivalent Parts;
 - (ii) to the repair of those Parts;
 - (iii) to the payment of the cost of replacing those Parts or of acquiring equivalent Parts; or
 - (iv) to the payment of the cost of having those Parts 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 paid by the Customer to EPSA.**
- 12.2 (Exceptions) The limitations in clauses 12.1 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.
- 12.3 (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.
- 12.4 (Insurable losses) Notwithstanding any other provision of this Contract, the total liability of EPSA to the Customer 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.