

## STANDARD TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1. The "Company" means Quantum Power Industries (Pty) Ltd or any of its subsidiaries or permitted assignees;
- 1.2. "Purchaser" means the customer who has placed an order with the Company or any person with whom the company contracts as a result of any offer to purchase any goods and or services from the company and includes the Purchasers' representatives, successors and permitted assignees;
- 1.3. "Contract" means any contract or agreement arising out of the acceptance of any offer by the "Company" through a letter of Acceptance;
- 1.4. "Payment Terms" means the payment terms set out in the quotation and/or tender submitted by the Company for the supply of products or rendering of services;
- 1.5. "Products" means the subject matter of the Contract and shall include the technologies, systems, sub-systems, generators and/or services supplied by Company

### 2. GENERAL

- 2.1. These terms and conditions shall apply to any Contract in terms of which the Company agrees to sell any products or render any service, irrespective of the circumstances under which the contract arose and the execution of any terms and conditions which the Purchaser may seek to make applicable
- 2.2. No alteration or variation of these terms and conditions shall be of any force or effect unless recorded in writing and signed by the Company and the Purchaser.
- 2.3. In the event that the Company issues any written instructions in regard to the use or application of Products, then such instructions shall be deemed to form part of the Contract.
- 2.4. Acceptance of a Purchase Order does not in any way guarantee the procurement of any form of finance on behalf of the Purchaser, for Company products.
- 2.5. The availability of Product is subject to availability of the Products at the date of ordering as indicated on the official Company order form.

### 3. ACCEPTANCE OF THE CONTRACT

- 3.1. A contract shall come into existence when the Company accepts any order for Products or Services placed by the Purchaser or when a Purchaser accepts any offer to sell Products made or Services rendered by the Company by conveying such acceptance, whether orally or written, to the Company.

### 4. PURCHASE PRICE AND PAYMENT

- 4.1. The purchase price paid by the Purchaser for the Products or Services shall be the Company's price agreed in writing to the Purchaser at the date of order unless otherwise agreed in writing.
- 4.2. The Company is registered as a Value Added Tax (VAT) vendor and VAT shall be payable on all purchases and services requested by the Purchaser.
- 4.3. Unless otherwise agreed the purchase price of goods and/or services shall be as defined in an official Company proposal unless otherwise agreed in writing.
- 4.4. Should the Purchaser fail to make any payment within the stated Payment Terms, then all amounts outstanding by the Purchaser will immediately become due and payable by the Purchaser.
- 4.5. Any amount not paid on the due date shall bear interest at the rate of 2 % (Two Percent) above prime bank overdraft rate. Such rate shall be calculated from the date on which the outstanding amount became due.

4.6. A certificate signed by an official of the Company, whose appointment need not be proved, shall serve as prima facie proof of the indebtedness of the Purchaser.

4.7. Should it become necessary to institute legal proceedings to recover overdue payments, then all legal costs as calculated between attorney and client shall be for the account of the Purchaser.

### 5. RETENTION AND OWNERSHIP

- 5.1. Ownership of any product sold in terms of the Contract, shall remain with the Company or a financier and shall not pass to the Purchaser until the Purchase price is paid in full and until such payment has been made, the Purchaser shall not allow ownership in the goods to pass nor shall they allow the goods to be hypothecated or pledged in any way.
- 5.2. Where the goods are to be stored at premises not owned by the Purchaser, the Purchaser hereby undertakes to inform the legal owner the property promptly that the Company reserved all rights in the goods delivered by the Company.
- 5.3. Ownership by the Purchaser will officially commence once the Company products have been commissioned on a property owned by the Purchaser and when the full price has been paid as stipulated above.
- 5.4. In the event of a plant operating contract concluded with the Purchaser, such a relationship shall be governed by a separate agreement which shall supersede these terms and conditions.

### 6. RISK

- 6.1. In the event of the Company having to deliver the goods at a predetermined site the risk shall pass from the Company to the Purchaser on delivery on such site. If it has been agreed that the Purchaser is liable for offloading, the risk shall pass on arrival of the goods at the site, but not off-loaded. The Company will in such a case be responsible for all necessary insurance cover and in transit risk.
- 6.2. In the event that the Purchaser has agreed to transport the Goods from the Company's manufacturing site the risk shall pass to the Purchaser. In such a case the Purchaser shall be responsible for all necessary insurance cover and in transit risk.
- 6.3. The Purchaser hereby indemnifies the Company against loss and damage of whatever nature (including consequential loss) to the Products or the Purchaser's property after delivery to the Purchaser or a financier once the risk has passed to the Purchaser.
- 6.4. It shall be the responsibility of the Purchaser to ensure that the goods are covered by an insurance policy to safeguard it against possible damage or loss.

### 7. DELIVERY

- 7.1. The purchase price paid by the Purchaser for the Products shall include all reasonable costs for delivery of the Product to the Purchaser unless otherwise stipulated in the official Company proposal.
- 7.2. Upon delivery to the Purchaser's site a duly authorized representative of the Purchaser shall be required to acknowledge such a delivery on the agreed site in the presence of the Company representative to verify that delivery of the Company goods was effected as agreed with the Company.
- 7.3. Any time or date stipulated by the Company for delivery is intended as an estimated delivery time only and the Company shall not be liable in any way whatsoever for any loss or damage whatsoever (including consequential loss) nor shall any delay confer upon the

Purchaser any right to rescind the Contract, unless otherwise agreed in writing.

7.4. If the fulfillment of any of the Company's obligations in terms of this Contract is prevented, hindered or interfered with by reason of any industrial dispute or by reason of any cause whatsoever beyond the Company's reasonable control, the Company shall have the right to cancel or suspend the Contract without prejudice to the Company's right to recover all amounts owed to the Company at the date of suspension or cancellation.

7.5. Specifications provided by the Purchaser to ensure accurate connection to Company products shall constitute the official design requirements for Company product connectivity/installation.

## **8. DISCLAIMER**

8.1. The company shall not be liable for any loss of profit, income, or any damage direct or indirect, consequential or otherwise sustained by the Purchaser from any cause whatsoever.

## **9. ERRORS, DEFECTS AND SHORTAGES**

9.1. The Purchaser shall immediately on receipt of any Products from the Company inform the Company representative of any errors, defects, or shortages by way of written notice to be received within 7 (SEVEN) days of receipt of such Products from the Company. Should the Purchaser fail to inform the Company of any such errors, defects, or shortages then the Purchaser shall have no claim against the Company in regard thereto.

9.2. Any Product returned to the Company shall be considered for credit by the Company provided that such products:

9.2.1. Are returned undamaged by the Purchaser within fifteen (15) days of receipt thereof;

9.2.2. Are accompanied by original, undamaged packaging if any and have not been used;

9.2.3. Are not defaced by price labels or any other markings.

9.3. Any Products delivered to the Purchaser in error, shall be considered for credit by the Company whilst that all pre-requisites contained in 9.2 have been complied with.

9.4. The relevant invoice or delivery note number must be quoted in respect of any Product thus returned by the Purchaser to the Company for credit.

9.5. Incorrect use, abuse, negligence or overload by the purchaser, their employees or any third party shall not be considered or entertained.

## **10. WARRANTY**

10.1. Parts and components not manufactured by the Company will be covered under the manufacturer's warrantee;

10.2. Goods manufactured by the Company and delivered to the Purchaser shall have a 12 month warrantee from date of delivery

10.3. Goods manufactured and/or installed on site by the Company carry a 6 month post supply/installation warrantee against poor workmanship.

10.4. Removal and replacement costs of defective parts or components are not covered by the warrantee

10.5. The expiry date of the warrantee remains static and no extension of a warrantee is given on replacement parts and components replaced during the warrantee period

10.6. The warrantee period stated in this clause does not supersede any statutory warrantee

## **11. DEFAULT**

11.1. Should the Purchaser:

11.1.1. fail to make any payments on due date of any amount due and owing, or

11.1.2. commit any other breach of the terms of any Contract and remain in default of such breach after receipt of fourteen days (14) written notice from the Company to the Purchaser calling on the Purchaser to remedy such breach; or

11.1.3. being an individual, die or is his/her estate provisionally or finally sequestered or surrendered, or being in partnership be terminated, or being a company be placed under provisional or final order of liquidation, or

11.1.4. compromise or attempt to compromise generally with the Purchasers creditors or have any judgment granted against him/her/it then:

11.2. The Company shall be entitled at its discretion, and without prejudice to any other rights, which it may have, including the right to claim damages arising out of the breach or termination of the Contract:

11.2.1. to declare all amounts owing by the Purchaser to be immediately due and payable;

11.2.2. to suspend the carrying out of its then uncompleted obligations until payment is made;

11.2.3. to terminate any credit facilities granted to the Purchaser;

11.2.4. to retake possession of all goods owned by the company in the possession of the Purchaser;

11.3. No relaxation, extension or indulgence which the Company may extend on any occasion in regard to the carrying out of the Purchaser obligations, shall prejudice any rights to enforce those obligations or be regarded as a waiver of the Company's rights on any subsequent occasion.

11.4. The Company's rights in terms of 10.2 shall not be exhaustive and shall be in addition to any other rights it may have, whether under contract or at common law or at otherwise.

11.5. The Purchaser shall not under any circumstances procure the services of a non-accredited service agent of the Company to affect any repair or diagnosis on any product supplied by the Company whilst a Company maintenance contract is still in force. Should this become apparent the Company's services stipulated in the maintenance contract (if any) may be suspended, at the sole discretion of the Company, without any credit to the Purchaser for maintenance services thus suspended.

## **12. NOTICES**

12.1. Any written notice in terms of this Contract shall be delivered by pre-paid priority mail or by hand.

12.2. Notices that have been delivered shall be deemed to have been received within the 5th (FIFTH) business day after mailing and on the day of delivery if delivered by hand on a business day.

## **13. GOVERNING LAW AND JURISDICTION**

13.1. This contract is governed by the Laws of the republic of South Africa.

13.2. In terms of section 45 of the magistrates Court Act of 1944, the Purchaser hereby consents to the jurisdiction of the Magistrates Court having jurisdiction in terms of Section 28 of the said Act in respect of any action to be instituted against the Purchaser by the Company in terms of the Contract notwithstanding that the claim amount may exceed the Jurisdiction of the magistrate's Court. It shall nevertheless be entirely within the discretion of the Company as to whether to proceed against the Purchaser in such Magistrates