

# STANDARD CONDITIONS OF SUPPLY

## ASSOCIATION OF MANUFACTURERS OF POWER GENERATING SYSTEMS

### 1 INTERPRETATION

- 1.1 In these conditions "the Company" means the Member of AMPS who is to supply Goods to the Customer; "the Customer" means the person firm or company or body entering into a contract for the purchase of Goods or Services with the Company; "Goods" means the goods (including any instalment of the goods or any parts of them) which the Company is to supply or has supplied to the Customer in accordance with these conditions; "Services" means the services which the company is to supply or has supplied to the Customer in accordance with these conditions; "Conditions" means the standard conditions of supply contained in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Company and the Customer; "Contract" means the contract for the sale and purchase of the Goods or Services; "Delivery Date" means the date on which risk passes in accordance with the terms of condition 9; "Standard Warranty" means the AMPS warranty relating to the Goods as in force at the date of the Contract unless the quotation and/or acceptance of order specifically refers to a different warranty document in which case any reference to "Standard Warranty" in these Conditions is to be construed as a reference to that different warranty document; "Writing" includes telex, cable, facsimile transmission and comparable means of communication.
- 1.2 Any reference in these Conditions to any provision of any statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 2 BASIS OF THE SALE

- 2.1 The Company shall sell and the Customer shall purchase the Goods and/or Services in accordance with any written order of the Customer which is accepted by the Company subject to these Conditions which shall govern the Contract to the exclusion of any other term and conditions subject to which any such order is made or purported to be made by the Customer.
- 2.2 The Company's quotation is not an offer capable of acceptance but an invitation to treat. A contract shall come into existence only when an order placed by the Customer is accepted by the Company on its standard form of acceptance of order signed by an authorised signatory of the Company whether the order is based on the Company's quotation or not and these Conditions shall be incorporated in such contract save that, if a Customer, who has not previously contracted with the Company on these conditions so chooses, he may rescind the contract so made by letter reaching the office of the Company not later than the seventh day after posting of the Company's acceptance of order.
- 2.3 No variations to these Conditions shall be binding unless the same are varied in writing, signed by a director of the Company and such signed variation is endorsed upon the Company's formal written acceptance of order from the Customer.
- 2.4 These Conditions are stipulated by the Company on its own behalf and on behalf of all its servants and agents and apply for the protection of all of its servants and agents as for the Company.
- 2.5 These conditions shall apply to the Contract and to all subsequent contracts between the Company and that Customer unless and until replaced by a revised edition of which the Customer has received a copy.
- 2.6 The Company's quotation is a quotation only for the Goods or Services actually specified. The Company does not accept that any obligations are to be implied by the quotation.
- 2.7 Save as hereinafter provided no communication from the Company or any of its servants or agents is of any contractual effect or is to be treated as a representation condition or warranty affecting the contractual obligations of the Company and the Customer under this or any other contract unless expressly incorporated in writing in the Company's form of acceptance signed by a Director of the Company. In entering into the Contract, the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations, conditions or warranties which are so expressly incorporated.
- 2.8 In the event of any proposed variation of the terms of any Contract a new acceptance of order form will be issued containing such proposed variations which shall take effect as being contractually binding on both parties notwithstanding any conversation or writing of any kind to the contrary only as and when signed by a Director of the Company and dispatched from the office of the Company for delivery to the Customer.
- 2.9 No indulgence granted or delay permitted by the Company shall constitute any bar to its enforcement of its rights at any time.
- 2.10 The Company shall not be obliged to pay over to the Customer any money credited to the Customer in the Company's books so long as the Company has any actual or prospective claim of any nature against the Customer.
- 2.11 If any part of these Conditions shall be found to be unreasonable, invalid or unlawful under any statute or rule of law pertaining thereto, the Court or other competent tribunal shall have the power to strike out or over-ride that part whether it be an entire Condition or Conditions, or some part or parts thereof to the extent that it be so found and no further, and the remainder of these Conditions shall not be affected thereby.
- 2.12 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information used by the Company shall be subject to correction without any liability on the part of the Company.

### 3 PRICE OF THE GOODS

- 3.1 The price of the Goods or Services shall be the Company's quotation price or, where no such price has been quoted (or the quotation price is no longer valid), the price list is the Company's published price list current at the date of the acceptance of the Customer's order. Where the Goods are supplied for export from the United Kingdom the Company's published export price list (if any) shall apply.
- 3.2 Unless the quotation and/or acceptance of order is endorsed "fixed price" the Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods:
  - 3.2.1 (save where the Customer is purchasing the Goods as a consumer (as defined in the EC Directive in Consumer Contracts)) to reflect any increase in the cost to the Company which is due to any factor beyond the Company's control (such as, without limitation on the aforesaid, any alterations of duties, significant increase in the cost of labour, materials or other cost of manufacture, or currency fluctuations);
  - 3.2.2 any change in delivery dates, quantities or specifications for the Goods which is requested by the customer or any delay caused by any instructions of the customer or failure of the Customer to give the Company adequate information or instructions.
- 3.3 Except as otherwise agreed in writing between the Company and the Customer all prices are given by the Company on an ex-works basis and where the Company agrees to arrange for physical delivery of the Goods to the Customer (or to any place nominated by the Customer) the cost of delivery (including carriage, packaging, insurance and offloading of the goods) shall be payable by the Customer in addition to the price for the goods at the same time as the Customer shall be liable to pay the price for the Goods.
- 3.4 The price is exclusive of any applicable Value Added Tax, which the customer shall be additionally liable to pay to the Company.
- 3.5 The cost of pallets and returnable containers will be charged to the Customer in addition to the price of the Goods, but full credit will be given to the Customer provided that they are returned undamaged to the Company before the due payment date.

## 4 TERMS OF PAYMENT

- 4.1 The time of payment of the price shall be of the essence of the Contract.
- 4.2 The Company reserves the right to require the Customer to make payments on account of the cost of components or materials supplied to the Company in connection with the production and supply of the Goods and, where payment is so requested, the Customer shall make payment to the Company within 14 days of the date of such request.
- 4.3 Payment for any Goods (credit being duly allowed for any sums received pursuant to Condition 4.2) shall be made in cash and when the Goods are ready for collection ex-works from the Company's premises except where (prior to the date of the Contract) the Company shall have agreed in writing to allow credit to the Customer. In cases where credit has been so agreed, the Customer shall pay the price of the Goods within the time stipulated in the agreement for credit notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer.
- 4.4 The Customer shall pay the price of the Goods in accordance with Condition 4.3 in default of which the Company may maintain an action for the price against the Customer.
- 4.5 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 4.5.1 cancel the Contract or suspend any further deliveries to the Customer;
- 4.5.2 repossess the Goods in the manner stipulated in Condition 9.4 herein and resell the Goods;
- 4.5.3 appropriate any payment by the Customer to any debt due from the Customer to the Company however longstanding as the Company may in its absolute discretion think fit notwithstanding any purported appropriation by the Customer;
- 4.5.4 charge the Customer interest (but before and after any judgement) on the amount unpaid at the rate of 3% per annum above the base rate of Barclays Bank PLC for the time being.

## 5 DELIVERY

- 5.1 Unless otherwise expressly stated on the quotation and/or acceptance of order form, any dates given for delivery, commissioning or installation are estimates only and in no circumstances shall the Company be liable for any delay in delivery or performance howsoever arising. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 5.2 Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection, but where the Company agrees to arrange for the physical delivery of the Goods to the Customer (or to any place nominated by the Customer), the Company shall make delivery by the Company delivering the Goods to such place by such method as the Company deems fit.
- 5.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and where for any reason howsoever arising the Company considers that it is unable to make complete delivery of any parcel or instalment of Goods the Company may delay such delivery or make such partial delivery on one or more occasions as it considers possible and the Customer's obligation to pay shall be correspondingly delayed or as the case may be proportionately reduced. Failure by the Company to deliver any one or more of the instalments in accordance with these Conditions, or any claim by the Customer in respect of any one or more such instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 5.4 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Customer's fault and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 5.5 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
- 5.5.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage, or
- 5.5.2 treat the Customer's failure to take delivery as a deemed cancellation in which case the provisions of Condition 15 shall apply.

## 6 INSTALMENT CONTRACTS

- 6.1 Where any contract is to be performed by the Company in stages or by instalments each stage and each instalment shall be treated as a separate contract regulated by the Conditions and the times herein set out for the performance of any act shall relate to each stage and each instalment as if it were a separate contract.
- 6.2 Where payment is to be made to the Company by instalments, each instalment shall be treated as a balance due under a separate contract.
- 6.3 If any instalment of any payment in respect of any contract is in arrears the Company may at any time while such arrears continue withdraw from further performance until the same is paid together with interest in full up to the date of payment and may commence proceedings to recover the same but this right shall be without prejudice to any other available right or remedy of the Company.
- 6.4 This Condition 6 shall apply where the Company makes partial deliveries pursuant to clause 5.3 hereof.

## 7 QUANTITY AND SHORTAGES

- 7.1 If the Customer notifies the Company in writing received by the Company within 21 days of the Delivery Date of Goods (or, in the case of export sales, the period referred to in Condition 7.2 below) of any shortages, and the Company is satisfied that such shortages occurred before dispatch then the Company will make good the shortage at its own costs within such times as may be reasonable for the Company having regard to its commitments or, at the option of the Company, reduce the price by the price of the Goods not delivered. In no other circumstances shall the Company be liable for any shortages nor shall the Customer be entitled to any other relief in respect of shortages.
- 7.2 In the case of export sales, the period of notification to be given to the Company is whichever of the following shall be appropriate:
- 7.2.1 in the case of Goods sent by air or sea, within 21 days of the date when the Goods are offloaded into the country where the same are to be delivered;
- 7.2.2 in all cases other than as mentioned in Condition 7.2.1 above, within 21 days of the date when the Goods cross the frontier of the country where the same are to be delivered.

## 8 EXTENT OF OBLIGATIONS, OF LIABILITIES AND OF REMEDIES

- 8.1 Any advice or recommendation given by the Company or its servants or agents to the Customer or its servants or agents as to the storage application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 8.2 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any application specification) submitted by the Customer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

- 8.3 The description of Goods appears on the face of the quotation and/or the face of the acceptance of order; where the Goods are described by reference to a part number which appears in the Company's standard catalogue, the Goods shall be deemed to comply with the Contract if the same comply with the Company's specification (current as at the Delivery Date) for goods sold under such part number.
- 8.4 The Company reserves the right to make changes in the specification in the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 8.5 Except where the Company has given advice or recommendation in writing as to the suitability of any Goods, the Customer relies solely on his own skill and judgement as to the suitability for any purpose of the Goods to be supplied by the Company.
- 8.6 Subject as expressly provided in these Conditions, and other than where the Customer is dealing as a consumer (as defined by the Unfair Contract Terms Act 1977) all conditions, warranties or other terms in respect of the Goods, whether express or implied by common law or by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 or any other statute or otherwise howsoever are excluded to the fullest extent permitted by law, save that the Company warrants as follows:
- 8.6.1 at the time of delivery the Goods correspond with their description as defined in 8.3 above and
- 8.6.2 the Goods are supplied subject to and with the benefit of the Standard Warranty.
- 8.7 Except in respect of death or personal injury caused by the Company's negligence, and save as aforesaid, the Company shall be under no liability whatsoever by reason of any representation or any implied warranty, condition, or other term, or any duty at common law or under the express terms of the Contract for any loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its servants or agents or otherwise) which arise out of or in connection with the supply of Goods or Services or the use or resale of the Goods by the Customer nor for any damages or payments (except such as may be expressly provided for in these Conditions and in no event whatsoever shall be Company's liability exceed the Contract price of the Goods and/or Services (as the case may be).
- 8.8 The requirements and recommendations of the Company (and of the manufacturers of any engine, alternator and radiator comprised in the Goods) relating to the fitting and/or installation servicing inspection testing and use of any Goods (and the engines and alternators and radiators comprised therein) must be strictly adhered to; the Customer must ensure that the Goods are regularly run and tested (so as to check and record that the same continue to perform according to specification). Without prejudice to the generality of the foregoing conditions or any other conditions herein contained, the Company shall be under no liability whatever for or in respect of any damage or loss arising directly or indirectly from the failure by the Customer to comply with or adhere to the provisions contained or referred to in this condition 8.8.

## 9 RISK AND TITLE

- 9.1 The risk in the Goods shall pass to the Customer (notwithstanding that the property may not have been passed to him) on the earlier of the following:
- 9.1.1 where delivery is to be ex-works, at the time when the Company notifies the Customer that the Goods are available for collection; or
- 9.1.2 where the Company and the Customer agree that the Goods are to be delivered otherwise than at the Company's premises at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods or in the case of delivery by post, as soon as the Goods are placed in the postal system or, in the case of delivery by any other form of carriage, as soon as the Goods are received by the carrier.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the Property in the Goods shall not pass to a Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods.
- 9.3 Until payment of the price as aforesaid, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property.
- 9.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) the Company shall (without prejudice to any other available rights and remedies of the Company) be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, the Company may by its servants or agents enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 9.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company and if the Customer does so, all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

## 10 SUB-CONTRACT

The Company reserves the right to perform all and any of its obligations under the Contract by one or more sub-contractors of its choice. All these terms and conditions apply notwithstanding that the work is performed by sub-contractors.

## 11 INSTALLATION AND COMMISSIONING

- 11.1 THE PROVISIONS OF THIS CONDITION 11 SHALL ONLY APPLY WHERE IT IS STATED, ON THE FACE OF THE QUOTATION AND/OR ACCEPTANCE OF ORDER, THAT THE COMPANY SHALL CARRY OUT ANY INSTALLATION AND COMMISSIONING WORK.
- 11.2 The Customer shall ensure that, prior to the anticipated delivery date of the Goods or any part thereof, the site where the same are to be delivered (and all access routes thereto) is clear, can be used without danger or difficulty by vehicles transporting the Goods and has full facilities for offloading the Goods and storing the same (pending completion of installation and commissioning) in a safe and suitable environment. Unless otherwise expressly stated on the quotation and acceptance of order form, the Customer shall also ensure that, prior to the intended date of any commissioning or installation works (and throughout the period of such works) there is available to the Company suitable lifting equipment, fuel, power and compressed air supplies, labour and test facilities as required by the Company to install test and commission the Goods.
- 11.3 If the Customer shall be in breach of the provisions of Condition 11.2 above, the Company may at its option either defer carrying out any installation and commissioning work until the Customer shall have fully complied with the provisions of condition 11.2 above or obtain itself such additional equipment facilities and other items as are required to complete the installation and commissioning. In either case the Customer shall pay to the Company the full amount of all costs and expenses (and other losses) incurred by the Company as a result of the Customer's breach. If there shall be any dispute as to the amount of the Company's costs, losses and expenses the same shall be certified by the Company's auditors whose certificate shall be final.
- 11.4 When the Company considers that it has completed its works of installation and commissioning it shall carry out such tests as it considers reasonably necessary to demonstrate that the Goods are functioning in accordance with the Company's specifications therefor. The Company shall notify the Customer of the time and place of such tests so that the Customer may nominate one of its employees to be present. If such test show that the Goods are functioning as aforesaid, the company shall issue a statement to that effect. If not the Company shall carry out such further works and additional and further tests until the same demonstrate that the Goods are functioning as aforesaid, at which point the Company shall issue a written statement to that effect.
- 11.5 If the Company shall fail to carry out any works of commissioning testing or installation or fail to carry out the same totally and/or with due care, the Company's sole liability shall be to carry out such further works of commissioning testing and installation as are required in order for the Company to issue a statement in accordance with the provisions of Condition 11.4. Under no circumstances shall the Company be liable to pay to or credit the Customer with any damages or loss whether direct or indirect or consequential; in no event whatsoever shall the Company's liability exceed the contract price of the Goods or Services (as the case may be).

## 12 EXPORT SALES

- 12.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chambers of Commerce as in force at the date when the Contract is made. Incoterms shall apply to this Contract save to the extent that they are inconsistent with any of the Conditions herein. Unless the context otherwise requires, any term or expression which is defined or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, provided that if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 12.2 When the Goods are supplied for export from the United Kingdom the provisions of these Conditions shall apply and in particular the provisions of conditions 12.3, 12.4 and 12.5 shall (subject to any special terms agreed in writing between the Company and the Customer) apply notwithstanding any other provisions of these Conditions which may be inconsistent with this Clause 12.
- 12.3 Prior to the anticipated date of delivery of any Goods, the Customer shall obtain all consents licences and permissions which are required for the import of the Goods into the country or place where the same are to be delivered and shall be liable for the payment of any duties thereon. If any such consents, licences or permissions are not obtained prior to such anticipated date of delivery, this shall not in any way relieve the Customer of its obligations to pay for the Goods but the Customer shall forthwith notify the Company in writing of the failure to obtain the same and (notwithstanding any other terms in this or any other contract relating to the Goods) the Company shall be deemed to have made complete delivery when such Goods are available for collection ex-works from the Company's premises.
- 12.4 Unless otherwise agreed in writing between the Company and the Customer, delivery of the Goods shall be made in accordance with Condition 5.2 herein, and in no circumstances shall the Company be under any obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 12.5 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for payment of any duties thereon.

## 13 FORCE MAJEURE

- 13.1 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure is due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as being beyond the Company's reasonable control;
- 13.1.1 act of God, explosion, flood, tempest, fire or accident;
- 13.1.2 war or threat of war, a national emergency, an outbreak of hostilities (whether or not involving the United Kingdom and whether or not war is declared) sabotage, insurrection, civil disturbance or requisition;
- 13.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
- 13.1.4 import or export regulation or embargoes;
- 13.1.5 strikes, lock-outs, trade disputes or other industrial actions (whether involving employees of the Company or a third party);
- 13.1.6 power failure or breakdowns in machinery, other breakdowns, delays in transport, accidents, delay in delivery of raw materials or components or difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 13.1.7 the Company's involvement in direct or indirect engagements on Government contracts or contracts under priority directions so as to prevent, hinder or delay work on other contracts.
- 13.2 Should the performance by the Company of any of its obligations under the Contract be prevented hindered or delayed by or in consequence of any occurrence referred to in Condition 13.1 above, the Company shall be entitled at any time, on notice to the Customer, to make partial deliveries only or to determine the Contract without liability and without prejudice in any case to rights which have already accrued to the Company in respect of deliveries already made.

## 14 INSOLVENCY OF THE CUSTOMER

- 14.1 This Condition applies if:
- 14.1.1 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of bona fide amalgamation or reconstruction); or
- 14.1.2 any resolution or petition to wind up the Customer's business shall be passed or presented otherwise than for a bona fide amalgamation or reconstruction; or
- 14.1.3 an encumbrance takes possession or a receiver is appointed of any of the property or assets of the Customer; or
- 14.1.4 the Customer shall have any distress or execution levied upon it, its property or assets; or
- 14.1.5 the Customer ceases, or threatens to cease, to carry on business; or
- 14.1.6 if a partner in the Customer (being a firm) shall have any distress or execution levied on him, his property or assets, or if he shall become insolvent or make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him; or
- 14.1.7 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 14.2 If Condition 14.1 above applies then, without prejudice to any other rights or remedy available to the Company, the Contract shall be deemed to be cancelled in accordance with Condition 15 below and the Company shall be entitled to suspend further deliveries under the Contract without any liability to the Customer and, if the Goods have been delivered or Services supplied, but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 15 DEEMED CANCELLATION AND CANCELLATION

- 15.1 If the Customer shall make a default in or commit any breach of its obligations to the Company or if Condition 14.1 above applies to the Customer or a partner of the Customer, the Customer shall be deemed to have cancelled the Contract and any other contract then subsisting between it and the Company. The following provisions shall apply to such cancellation which shall take effect without prejudice to the Company's accrued rights and existing remedies against the Customer.
- 15.2 If any order for Goods or Services given by the Customer shall be cancelled or be deemed to be cancelled by the Customer after acceptance or order by the Company for any reason otherwise than as herein permitted, the Company shall be entitled to recover from the Customer as liquidated damages the cost to the Company of any goods, works or materials expended in the execution and in preparation for the execution of the Contract and further in every case the profit which the Company might reasonably have made on such Contract but the Company shall give credit to the amount of any such costs (but not profit) recovered in respect of the same goods or materials by virtue of any other contract and the amount of any deposit recovered from the Customer. Such sum ascertained as aforesaid shall be certified by the auditors to the Company and their certificate shall be final.

## 16 GENERAL

- 16.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 16.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver for any subsequent breach of the same or any other provision.
- 16.3 Any dispute between the Company and the Customer arising in any way in connection with the Contract between them shall be determined in the first place in the manner, if any, provided in these conditions for the resolution of such disputes; in any other case by reference to arbitration under the provisions of the Arbitration Acts 1950–1979 and under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules, and the award of such arbitrator or arbitrators shall be a condition precedent to either party to sue the other except for an action by the Company for debts due from the Customer.
- 16.4 The Contract between the Company and the Customer shall be governed exclusively by English Law.

## ARBITRATION SCHEME

# ASSOCIATION OF MANUFACTURERS OF POWER GENERATING SYSTEMS

### ARBITRATION SCHEME

- 1.1 In this document the expressions “Company”, “Customers” and “Goods” are to be interpreted in accordance with the provisions of the AMPS Standard Conditions of Supply.
- 1.2 If the Customer shall not be satisfied with any decision of the Company notified to the Customer pursuant to the provisions of the AMPS Standard Warranty, then the Customer may (if it so elects) have the same referred to arbitration pursuant to the terms of this condition. Any such election must be made within ten days following the receipt of the Company’s notification pursuant to the provisions of the AMPS Standard Warranty and such election must be in writing and sent to the Secretary of AMPS. A copy of the election must also be sent to the Company. The election must contain brief details of the nature of the Goods, of the complaint and the decision of the Company which is the subject of the application for arbitration and must be accompanied by the appropriate fee (details of which will be given to the Customer upon request to AMPS).
- 2 From receipt of such notice of election the following shall occur.
  - 2.1 The Company and the Customer shall each submit to the Secretary of AMPS all such documents and information as requested in connection with the arbitration.
  - 2.2 Subject to compliance with 2.1 above, the Secretary of AMPS shall nominate three members of AMPS (who shall not include the Company or any subsidiary or associated company of the Company) to act as an arbitration committee and hear the matter in dispute. The Company and the Customer shall allow one or more of such members, upon request, to inspect and test the Goods and any relevant components or parts thereof.
  - 2.3 Following due compliance with 2.1 and 2.2 above, the Secretary of AMPS shall nominate a time and place when the Company and the Customer shall present their respective cases to the arbitration committee. Each of the Company and the Customer shall be entitled, at such hearing, to call technical experts or other witnesses.
  - 2.4 The arbitration committee shall give the Company and the Customer a written notification of its decision as soon as possible after the conclusion of the hearing. If the arbitration committee finds in favour of the Customer, it may (as part of such finding) order the Company to reimburse the Customer with all or part of the arbitration fee paid by the Customer pursuant to condition 1.2 hereof and payment of some or all of the Customer’s out of pocket expenses. If the finding is against the Customer, the arbitration committee may order it to pay some or all of the Company’s out of pocket expenses.
- 3 The Customer shall (within seven days of the date of the arbitration committee’s written decision) notify the Company and the Secretary of AMPS if it accepts the decision of the arbitration committee. If so then the decision of the arbitration committee shall be final and binding on both the Company and the Customer and no further steps shall be taken except such (if any) as are required to be taken in accordance with the decision. If however the Customer shall not accept the decision of the arbitration committee, the Customer shall be at liberty to proceed with arbitration under the provisions of the Arbitration Act 1950 – 1979 pursuant to the provisions of the AMPS Conditions of Supply.

## STANDARD WARRANTY

# ASSOCIATION OF MANUFACTURERS OF POWER GENERATING SYSTEMS

### 1 GENERAL

- 1.1 In this document “the Company” means the member of AMPS who is to or has supplied Goods to the Customer; “the Customer” means the person firm company or body who has entered into a Contract for the purchase of Goods with the Company; “Goods” means the goods (including any instalment of the goods or any parts of them) which the Company is to or has supplied to the Customer in accordance with these Conditions; “Conditions” means the AMPS Standard Conditions of Supply; and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Company and the Customer; “AMPS Standard Warranty” has the meaning attributed to it in clause 1.2 below: “Contract” means the contract for the sale and purchase of the Goods or services; “Writing” includes telex, cable, facsimile transmission and comparable means of communication.
- 1.2 This Warranty document contains the AMPS Standard Warranty and forms part of and must be read in accordance with the Conditions as incorporated in the Contract unless the Contract specifically refers to a different warranty document in which case that different warranty document (to the exclusion of the AMPS Standard Warranty Document) forms part of and must be ready in accordance with and subject to the terms and conditions contained in the Conditions as incorporated in the contract.
- 1.3 In cases where the Customer is a consumer (as defined by the Unfair Contract Terms Act 1977) the provisions contained in this Warranty shall be in addition to (and shall not limit or restrict) the statutory rights available to consumers under English Law.

### 2 WARRANTY

Subject to the conditions contained in clauses 3 and 4 below the Company warrants that the Goods will correspond with their specification at the time of delivery and (in relation to mechanical and electrical components in the Goods) the Company warrants that such components shall (provided the Goods are subjected to normal usage only and subject to the conditions and exclusions referred to in clause 4 below) remain free of defects (other than those resulting from fair wear and tear) for twenty four months from the date upon which the risk in the Goods passes to the Customer in accordance with the terms of the Contract.

### 3 PROCEDURES

- 3.1 In no case shall the Company be under any liability as aforesaid where the Customer fails to observe and follow the steps set out in clauses 3.1.1 – 3.1.4 below.
- 3.1.1 Forthwith upon becoming aware of any alleged defect, the Customer shall notify the Company in writing of such alleged defect in the Goods, the nature thereof and the respect in which the Company is alleged to be in breach of contract or duty;
- 3.1.2 The Company shall be afforded reasonable opportunity to inspect and to test the Goods; where the Company so requests, the Customer shall return the Goods (at the Customer’s expense) to the Company’s premises;
- 3.1.3 Within a reasonable time after carrying out such inspections and tests as are considered necessary by the Directors of the Company, the Company shall inform the Customer in writing EITHER that it rejects the complaint entirely, OR that it offers an allowance against the price paid or to be paid in respect of the allegedly defective Goods OR that it offers to replace allegedly defective Goods or to return or credit the price paid in respect of those Goods, subject to those Goods (where the same have not been returned to the Company pursuant to clause 3.1.2) being returned to the Company within a stated time at the Customer’s risk and expense;
- 3.1.4 Within 10 days of receipt of the Company’s notification the Customer shall inform the Company whether it accepts the Company’s decision or not. If not the Company and the Customer shall then be deemed to be in dispute. In such circumstances the dispute shall be dealt with in accordance with the provisions of the contract or (should the Customer so elect) in accordance with the AMPS arbitration scheme.
- 3.2 Where pursuant to clause 3.1.3 additional goods are to be supplied the same shall be treated as being supplied under a new contract subject to the AMPS terms and conditions in force as at the date of such contract.

### 4 RESTRICTIONS AND LIMITATIONS

- 4.1 The provisions of this Warranty shall not apply where the Goods have been modified by anyone without the Company’s prior written consent thereto.
- 4.2 The requirements and recommendations of the Company relating to the fitting and/or installation servicing inspection testing and use of any Goods must be strictly adhered to; in all appropriate cases the Customer must ensure that the Goods are regularly run and tested (so as to check and record that the same continue to perform according to the specification). Without prejudice to the generality of the foregoing Conditions or any other Condition herein contained, the Company shall be under no liability whatever for or in respect of any damage or loss arising directly or indirectly from the failure to comply with or adhere to the provisions contained or referred to in this Condition 4.2.
- 4.3 The limitations of liability contained in the Contract and the Conditions for the benefit of the Company apply to and are incorporated in this Warranty document in the same way as if the same had been set out in full herein.