

## THISTLE GENERATORS TERMS AND CONDITIONS OF TRADING

### DEFINITIONS :

In these conditions the following expressions shall have the meanings hereby respectively assigned to them, that is to say:

"the company" means Thistle Generators Limited, "equipment" means all plant, equipment, accessories and spares manufactured or supplied by the company, "customer" means any person, company or firm who shall enter into a contract with the company for the purchase of equipment. "our Works" means Faraday House, Coalburn Road, Fallside, Bothwell, G71 8DA or F.G. Wilson Engineering Limited, Larne, Northern Ireland, "the price" means the price or prices stated in our tender, as adjusted by these terms and conditions: "the tender" means the tender supplied by the company to the customer.

- 1     **ORDER :** Each order must be accompanied by sufficient information to enable the company to proceed with the order forthwith, otherwise the company may amend the tender prices to cover any increase in costs and the time for delivery may also be extended. Any samples submitted must be returned to our works, carriage paid, within one month from despatch, or paid for.
- 2     **PACKING :** Unless otherwise specified all wooden packing cases, skids, drums etc. are included in the price and are not returnable.
- 3     **DRAWINGS ETC :** All descriptive specifications, drawings and particulars of weights and dimensions submitted by the company are approximate only and the descriptions and illustrations in catalogues, price lists and other advertisement matter are intended merely to present a general idea of the goods described therein and none of these shall form part of the contract. Certified outline drawings will be supplied free of charge if desired.
- 4     **TESTS :** All equipment is carefully inspected and where practicable is subject to standard tests at our Works before despatch. If any special test or tests, whether in the customer's presence or not, are required by the customer these must take place at our works unless otherwise agreed. If the customer requires any such special test such requirements must be made known to the company in writing at time of tender. The costs of such test or tests which do not form part of the contract price will be charged in addition to the price. In the event of the customer or his representative failing to attend for any test the company shall proceed with such test notwithstanding and the customer will be deemed to have accepted the results of the same as if it or its representative had been present. Agreement to conduct any test in the presence of a representative nominated by the customer as inspector is dependant upon:
  - a)     The name of the customer's nominated representative being submitted to the company seven days before the date of the proposed test;
  - b)     The company's right to refuse such nomination and not allow such representative to be present at the test.

In the event of the company refusing such nomination and failing mutual agreement on a substitute the tests required by the customer shall be carried out in the presence of a representative nominated by Lloyds, the customer being solely responsible for all costs incurred thereby.
5.     **PERFORMANCE :** The company will do its best to ensure the performance figures given by the company are correct. The company accepts no liability in relation thereto unless such figures are specifically guaranteed by the company in writing. The customer assumes responsibility for ensuring that the capacity and performance of the

goods are sufficient and suitable for its purpose. Furthermore the company accepts no liability whatsoever for any consequential or economic loss (including without prejudice any loss of profit) resulting from the failure of any equipment supplied by the company.

6. **DESPATCH :** The company shall make every effort to despatch the goods on the date given but will accept no liability for failure to do so unless specifically agreed in writing in a particular case and any despatch shall be subject, in addition to these conditions, to the terms and conditions of the carrier effecting the delivery.
7. **TERMS OF PAYMENT :** Payment in respect of any goods or services shall be made in accordance with the terms specifically stated in our tender or on our invoice. If not so specifically stated in our tender 10% of the amount of the price shall become due on the customer's placement of the order and the remainder shall become due on notification by the company that the goods have been tested under condition 4 or that they are ready for despatch.
  - (i) Not later than five days after any payment has become due, the customer shall give written notice to the company stating the amount which the customer proposes to pay and the basis on which that amount is calculated. Where no such notice is given the amount to be paid is the amount falling due in terms of these conditions.
  - (ii) Payment shall become finally due in accordance with the terms stated on our invoices or if no terms are stated, within 28 days of the date on which they become due.
  - (iii) Where the customer intends to withhold payment of any amount that has become due to the company the customer must give written notice to the company not later than seven days before that payment becomes finally due stating the amount to be withheld and the grounds for withholding payment.
  - (iv) Where the duration of the work to be carried out is in excess of four weeks the company may apply for interim payments at monthly intervals following the customer's order based on the total value of work executed at the date of each application. The amounts so ascertained, less any instalment previously paid, shall become due on the date of the company's application and the final date for payment shall be thirty days after the date on which the payment became due.
  - (v) In the event of failure by the customer to make payment in accordance with these terms of payment the company may charge the customer interest on amounts outstanding after the final date for payment at the rate of four per cent above the minimum lending rate of the Bank of England.
  - (vi) Any liability on the company's part is subject to the terms of payment and all the customer's other obligations to the company under the contract being strictly observed.
  - (vii) If the customer fails to pay any amount it is required to pay in terms of these conditions by the final date for payment or, where there is no final date, within 7 days of a written notice requiring payment, the company may, on giving 7 days notice of its intention to suspend, suspend performance of all or part of its obligations hereunder.

- 8 **STORAGE** : If the company does not receive forwarding instructions within seven days after dates of notification that the goods are ready for despatch the customer shall take delivery or arrange for storage, failing which the company shall be entitled but not bound to store the equipment and insure same making a charge to the customer commensurate with weight or measurement, unless the goods are despatched. Any charges for storage or demurrage after despatch must be paid for by the customer.
- 9 **DAMAGE IN TRANSIT** : When the price includes for delivery any claim for any damage sustained in transit to the goods supplied by the company must be made in writing to the company within three days of delivery failing which the company shall not be obliged to consider such a claim.
- 10 **EXTRA COST** : In the event of any suspension of the work arising from the customer's instructions the price shall be increased to cover any extra expense thereby incurred by the company.
- 11 **LIABILITY** :
- (a) The company's entire liability in respect of the equipment shall be as set out within the terms of the company's guarantee (available on request) which shall be deemed to form part of these conditions and which shall take precedence over any other conditions or warranties that would otherwise have been imposed by statute, common law, trade custom, course of dealing or otherwise.
  - (b) The company accepts no responsibility for any drawing or specification not prepared by the company and submission of the company's tender does not constitute any warranty, guarantee, representation or opinion of the practicability of construction or of the efficacy, safety or otherwise of the equipment or work to be executed by the company in accordance therewith and the costs of any additional work caused by defects in any such drawings, designs or specifications shall be chargeable in addition to the price.
  - (c) Notwithstanding conditions 11(a) and/or 11(b), the company shall not be liable for any consequential or resultant loss or damage howsoever occurring nor for the labour costs involved in removal or replacement of parts.
- 12 **INSURANCE** : Any liability for damage by fire or any other cause not covered by the company's guarantee shall be the responsibility of the customer from the date of delivery and the company shall be under no obligation to effect any insurance in respect of the equipment or work which was the subject of the contract. Any such insurance shall be the responsibility of the customer.
- 13 **CHANGES IN SPECIFICATION** : The company reserves the right at any time before delivery to amend specifications or designs or to substitute machinery of equivalent performance. In any of these events the company will notify the customer and the customer will then be entitled to cancel the contract on payment to the company of the amount of the expense or loss which the company may incur therein. The company shall not be liable to the customer for any loss or expense which the customer may sustain as a consequence of the company's amending specifications or designs or substituting machinery of equivalent performance, whether or not the customer exercises its right of cancellation.
- 14 **INTELLECTUAL PROPERTY** : In the event of any claim being made or legal proceedings being instituted against a customer in respect of infringement of patent by the manufacture or sale by the company of the equipment the customer shall notify the company immediately in which case the company shall be at liberty, with the customer's assistance, if required, but at the company's expense, to conduct all negotiations for the settlement of such claim or any litigation that may arise therefrom.

The company will indemnify the customer in respect of any reasonable costs, charges, expenses or damages arising from such claims or proceedings subject to such notification, provided that :

- (i) No such equipment or any part thereof shall have been used for any purpose other than that for which it may have been supplied;
- (ii) The customer shall indemnify the company for any costs, charges, damages and expenses incurred by the company as a result of any action, claim or demand brought against the company as a result of the company's compliance with or use of the customer's design specifications, drawings or data.

**15 OWNERSHIP :**

- (i) Notwithstanding delivery and/or the granting of credit the equipment remains the absolute property of the company until payment of the price for the equipment and where applicable, of installation and/or any interest receivable shall have been received in full by the company and until such times as the ownership of the equipment passes to the customer hereunder the customer shall hold the equipment in a fiduciary capacity for the benefit of the company;
- (ii) Notwithstanding the foregoing the customer shall be entitled to install the equipment (if not undertaken by the company) and to operate the equipment in the normal course of the customer's business;
- (iii) The customer agrees to store the equipment until it has been paid for or installed in the normal course of the customer's business in such a way that it is readily identifiable as the property of the company.
- (iv) Notwithstanding delivery, at any time until payment is received in full and without prejudice to any other remedy the company may possess, the company or its agents shall be entitled immediately after giving notice of its intention to do so to enter upon the premises where the equipment is located, with such transport as may be necessary and repossess any equipment to which it has title hereunder.

**16 INSTALLATION :** Any agreement by the company to effect installation of the equipment either at the customer's premises or as otherwise directed by the customer is made on the express condition that the company accepts no liability whatsoever in relation to any such work of installation howsoever arising and whether or not caused by the negligence or breach of duty by the company or the company's servants or agents or any other party for whom the company is responsible. The following conditions are applicable when the company or sub-contractors appointed by the company are to carry out off-loading, installation or commissioning of any of the equipment.

- (i) The tender is submitted on the assumption that the company's engineers will be able to complete the work unhindered and uninterrupted. If additional visits to site are necessary because of delays for which the company is not responsible these visits will be charged at the company's standard rates (which are available on request);
- (ii) Unless otherwise specified the company is not responsible for the construction of cable trenches, floor plates, masonry works, hand rails, carpentry work or any other civil engineering or building works;

- (iii) The company is not responsible for any damage to floors, paint work or other finishes where such damage results from the moving of the equipment in the normal fashion.
  - (iv) It is the customer's responsibility to advise the company of any restrictions of access to site. This includes all overhead obstructions, parking restrictions or roadwork's at site locations, site services such as cables, pipework, ducts etc, above and below ground or access floor levels. If the customer fails to do so he shall indemnify the company against any extra expense or liability incurred or suffered by reason of such failure.
  - (v) It is the responsibility of the customer to provide the company's engineers with a permit to work on equipment which can be made live.
- 17 If the customer insists on nominating a specific sub-contractor when giving its order, the company reserves the right to vary the price.
- 18 Cancellation by the customer of a contract, for reasons other than those contained in condition 13 shall only take place with the company's written agreement and shall be subject at the company's option either to a minimum cancellation charge of 10% of the price or sufficient compensation to cover any of the company's costs incurred by such cancellation and any resulting loss of profits.
- 19 Any dispute or difference arising between the parties hereunder shall be referred to arbitration before an arbiter to be agreed between the parties or failing agreement nominated by the Scottish branch of the Chartered Institute of Arbitrators (Arbiters).
- 20 These Terms and Conditions are subject to Scottish Law, and each party irrevocably submits to the non-exclusive jurisdiction of the Courts of Scotland.