

## **FG Wilson BRAND GENERATOR SETS, PARTS AND SERVICE**

### **Terms and Conditions of Sale**

In these terms and conditions "Seller" means Caterpillar (NI) Limited, a Northern Ireland corporation located in the United Kingdom with principal offices in Larne, Northern Ireland ("Seller") and "Buyer" means the person, firm or company who buys or agrees to buy goods from the Seller.

**AGREEMENT OF SALE:** Acceptance of any order of Buyer is conditional on Buyer's acceptance of the terms and conditions contained herein, on any pages attached hereto, and in the Seller's quotation or in the Seller's acknowledgement of Buyer's order, if any. Any terms and conditions of Buyer's order which are inconsistent with these terms and conditions are rejected, will not be binding on Seller, or applicable to the sale and/or Delivery of the products, parts or services referred to herein. These conditions shall apply to the exclusion of any other terms and conditions howsoever referenced by the Buyer. This Agreement shall not create or give rise to nor shall it be intended to create or give rise to any third party rights except to the extent expressly stated herein. The application of any legislation, including but not limited to the Contracts (Rights of Third Parties) Act 1999, giving to or conferring on third parties contractual or other rights in connection with this Agreement shall be excluded. No waiver, alteration, or modification of the provisions hereof shall be binding on Seller unless agreed to in writing by a duly authorised representative of Seller. The waiver by either party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement. Seller, in its sole discretion, may assign or partially assign its rights and/or delegate or partially delegate performance of its duties with respect to this Agreement and/or any order placed by Buyer under this Agreement. In the event of such assignment and/or delegation to an affiliate of Seller, such affiliate's terms and conditions of sale may apply where necessary to the extent they are inconsistent with, or in addition to, the terms and conditions of sale stated in this Agreement.

**PRODUCTS COVERED BY AGREEMENT:** This Agreement concerns the purchase and sale of the parts, products and/or services shown in Seller's acknowledgement of order.

**PRICES AND PAYMENTS:** Prices shall be Seller's list price for the goods less any discount as notified in writing by Seller, plus Seller's charges for Delivery, insurance, consular fees, banking charges, etc., all as in effect on the date of shipment of the goods and any costs resulting from Buyer-caused delays. Seller may invoice Buyer on or at any time after delivery for any amounts still due (see Delivery) and Buyer shall pay within thirty (30) days of the date of invoice. Buyer shall not apply any set-off to the price of Seller's products without prior written agreement by the Seller. Buyer shall pay to Seller, on demand, a late payment charge equal to the lesser of Seller's then-current standard late payment charge (Prime Interest Rate + 3%/annum plus expenses) or the highest charge allowed by law on any amount unpaid on the due date.

**TAXES:** Seller's prices do not include any sales, use, excise or other taxes which Seller may be required to pay in connection with filling any of Buyer's orders. Buyer shall pay the amount of any applicable present or future tax as an additional charge or, in lieu thereof, Buyer shall provide Seller with a tax exemption certificate as applicable and acceptable to taxing authorities. For those products sold Ex-Works ("EXW") on which value added tax has not been charged on the invoice ("VAT Free Invoice"), proof of export documents ("Proof of Export") as required by the Seller must be provided to the Seller within such time as Seller specifies. If such Proof of Export is not provided within this period, Seller will invoice Buyer an additional amount to cover Seller's value added tax liability.

**PATENTS:** Seller undertakes and agrees to defend at Seller's own expense all suits, actions or proceedings brought against Buyer, or any of Buyer's customers, for actual or alleged infringement of any letters patent brought solely because of or on account of the use or sale of such products sold by Seller as are constructed and used according to the manufacturer's standard commercial designs or specifications. Seller further agrees to pay and discharge any and all judgements or decrees which may be rendered against the defendants therein, provided notice within fifteen (15) days of any such suit, action or proceeding is given Seller, and provided further, Seller is given complete charge and control of the defence of such suit, action or proceeding. Buyer undertakes and agrees to defend at Buyer's own expense all suits, actions or proceedings brought against Seller or Seller's source of supply for actual or alleged infringement of any letters patent because of or on account of any feature, construction or design (other than manufacturer's standard commercial feature, construction or design) incorporated at Buyer's request in the products sold to Buyer or incorporated by Seller to adapt such products to Buyer's particular use, or for any additions to, changes or adaptations made by Buyer or any of Buyer's customers subsequent to the delivery of the products. Buyer further agrees to pay and discharge any and all judgements or decrees which may be rendered against the defendants therein, provided immediate notice of any such suit, action or proceeding is given Buyer, and provided further, Buyer is given complete charge and control of the defence of such suit, action or proceeding.

**WARRANTY:** Products sold by Seller are warranted as provided in Seller's applicable standard Warranty World certificate in effect on the date of Delivery and available upon request for a period of 1 year from commissioning or 18 months from delivery by Seller, whichever is sooner. Buyer agrees that if the products are purchased for resale, Buyer shall make available to its customer at the time of resale a copy of such warranty and agrees to impose a similar obligation on customers purchasing such products for resale. The goods or products must be used in the manner represented to Seller in writing prior to Seller issuing an acknowledgement of order. If no representation is made, generator sets will be deemed to be used in a stand-by mode and configuration. **SUCH WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE. REMEDIES UNDER SUCH WARRANTY ARE LIMITED TO THE PROVISION OF MATERIAL AND SERVICES, AS SPECIFIED THEREIN. SELLER IS NOT RESPONSIBLE FOR INDIRECT OR CONSEQUENTIAL LOSSES AND DAMAGES.**

**TITLE AND RISK OF LOSS:** Unless Seller specifically agrees otherwise in writing, delivery of products sold by Seller shall be Ex-Works (EXW), Seller's designated facility and risk of loss and damage to such products shall pass to Buyer at such EXW place, provided, however, that if the products are ready to ship EXW and the products have not been collected within 5 (five) business days of Seller's "ready-to-ship" date, Seller at its option and at Buyer's expense, shall be entitled to ship the products Free Carrier (FCA), Buyer's designated "ship to" address approved by Seller, and risk of loss to products shall pass at such FCA place. All delivery terms referred to are INCOTERMS 2000. For the purposes of the forgoing, Seller may, but shall not be obligated to, obtain export clearance for FCA shipments. Notwithstanding delivery and the passing of risk in the products, title shall not pass to Buyer until Seller has received payment in full for the products and all other goods or services agreed to be sold by Seller to Buyer for which payment is then due. Until such time as title passes, Buyer shall hold the products as Seller's fiduciary agent and shall keep them separate from Buyer's other goods. Prior to title passing Buyer shall be entitled to resell or use the products in the ordinary course of business and shall account to the Seller for the proceeds of sale. If the Buyer fails to comply with a demand from the Seller to return products to which title has not passed, Seller may forthwith enter any premises where the products are stored and repossess them.

**LIABILITY AND CLAIMS:** Seller's liability for any claim of any kind, including claims for negligence, or for any loss or damage arising out of or connected with, or resulting from any order accepted by Seller, or from the manufacture, sale, delivery, resale, repair or use of any

products covered by or furnished under such an order shall in no case exceed the price allocable to the product or part thereof which gives rise to the claim except as provided above under "PATENTS". In no event shall Seller be liable for special, indirect or consequential damages. Save that nothing in these conditions shall have the effect of excluding or limiting Seller's liability for death or personal injury resulting from Seller's negligence. Any claims against Seller for shortages by it in making Delivery shall be made in writing to Seller within fifteen (15) days after receipt of Delivery.

The fulfillment of any order accepted by Seller is subject to strikes, labour disputes, lockouts, accidents, fires, delays in manufacture or in transportation or delivery of materials, floods, severe weather or other acts of God, embargoes, governmental actions, or any other cause beyond the reasonable control of Seller, whether similar to, or different from, the causes above enumerated, whether affecting Seller or Seller's supplier(s), and any such causes shall absolve Seller from any liability to Buyer.

**CHANGES:** Seller may, at any time, without notice, make changes to the specification or design of products where such change is required to ensure that the products conform with any applicable safety or other statutory requirements or where such changes do not materially affect their quality or performance. Delivery of such modified products shall constitute proper performance of the contract by Seller.

**DELIVERY:** Delivery dates are approximate. Delivery of products under an order accepted by Seller shall be subject to the approval by Seller of Buyer's financial condition at the time of Delivery. Whether or not credit terms are specified elsewhere, Seller may, at its option, condition Delivery under any order accepted by Seller upon receipt of satisfactory security or of cash before Delivery. If, at Buyer's request, Delivery of products on an order accepted by Seller is delayed beyond the date products are ready for Delivery, Seller may require immediate payment in full and/or assess additional charges for storage and other expenses incident to such delay.

**CANCELLATION AND DELAYS TO DELIVERY:** In the absence of other written agreement between Buyer and Seller governing cancellation, an order accepted by Seller may be cancelled by Buyer only upon written notice to Seller and payment of Seller's cancellation charges. At Buyer's request, Seller will furnish a statement of such charges prior to cancellation. Buyer shall not return or refuse Delivery of products without prior written approval and direction from Seller, and Buyer shall pay for freight, storage, extra costs for handling and other expenses that may be incurred thereby.

**GOVERNING LAW:** These terms and conditions shall be governed by and construed under the laws of Northern Ireland under the jurisdiction of the United Kingdom. No remedy herein provided shall be deemed exclusive of any other remedy allowed by law or equity.

**INTERPRETATION:** Section headings contained herein are for ease of reference only and shall not be given substantive effect.

**RIGHT TO TERMINATE:** Seller shall be entitled to cancel forthwith on written notice to and without any liability to Buyer any order for products presented to or accepted by Seller, if Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation or a receiver is appointed over any property or assets of the Buyer or the Buyer ceases or threatens to cease carrying on business or is unable in the Seller's reasonable opinion to meet its debts as they fall due.

**RELATIONSHIP OF THE PARTIES:** Nothing herein contained shall be deemed to create an agency, joint venture, partnership or fiduciary relationship between the parties hereto or, except as otherwise herein specifically provided, to confer upon either party any right or license to use the patents, trade names, trademarks or service marks of the other party.